EXHIBIT B

JOINT DISPUTED POINTS LIST

Part 1

DOCKET #

MASTER LIST OF ISSUES BETWEEN SBC AND TELCOVE

PART 1 – GENERAL TERMS & CONDITIONS, COLLOCATION, INTERCARRIER COMPENSATON, INTERCONNECTION TRUNKING REQUIREMENTS (ITR), NETWORK INTERCONNECTION METHODS (NIM), OUT OF EXCHANGE TRAFFIC, AND STRUCTURE ACCESS – Issues 1 - 67

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
		GENERAL TERMS & CONDITONS				
Is the definition of Access Compensation limited to SBC's access tariffs?	1	1.1.2	**"Access Compensation"** is the compensation paid by one Party to the other Party for the origination/termination of intraLATA toll calls to/from its End User. Access compensation is in accordance with the LEC's ***or CLECs*** tariffed access rates, ***as applicable***.	Where TelCove has in place filed and approved access tariffs it seeks only to charge approved rates to SBC. TelCove is not willing to artificially cap via contract its otherwise lawful access rates.	**"Access Compensation"** is the compensation paid by one Party to the other Party for the origination/termination of intraLATA toll calls to/from its End User. Access compensation is in accordance with the LEC's tariffed access rates.	SBC opposes the CLEC's proposed language because it would allow the CLEC to charge a higher access compensation rate than the rate set forth in SBC's tariff. It is SBC's position that the CLEC's intrastate switched access rates should be capped at the same level as SBC's. This is consistent with the intent of the FCC's access charge reform and with the current rule at 47 C.F.R. § 61.26(b)(1) (providing that a "CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of the "rate charged for such services by the competing ILEC" or the lower of an FCC benchmark or the CLEC's rate charged prior to June 2001). While a CLEC may have the right to promulgate a rate that differs from SBC's, the CLEC must make a showing as to the legitimacy of that newly-promulgated rate. Until such time, consistent with the ideals of 47 C.F.R. 61.26, rate symmetry in the form of a price cap at the incumbent's rates should apply.
Should the ICA obligate SBC to continue to provide network elements that are no longer required to be	2	1.1.73	Deliberately omitted.	TelCove has a general objection to the use of the term "Lawful" to describe UNEs. As set forth in greater detail in the UNE Appendix DPL, UNEs are either available or	**"Lawful,"** when used in relation to unbundling, unbundled network elements, network elements and/or UNEs or activities involving UNEs, means required by Section	SBC's proposed "Lawful UNE" language specifically addresses the Declassification of UNEs that began with USTA I, continued with the FCC's release of its Triennial Review

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provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?				not. There is no such thing as an "unlawful" UNE. The definition of "Lawful" proposed by SBC is also circular in that it refers to "lawful" FCC rules. SBC's definition also improperly excludes any reference to the Commission's authority, rules and regulations.	251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.	Order, and has further been defined with the release of the Court's mandate in the USTA II case, on June 16, 2004. Rather than settle for standard (vague) change in law language addressing the Declassification of UNEs, SBC's language clearly defines when and how SBC will be obligated to provide UNEs under Section 251(c)(3) and how, once SBC is no longer required to provide those UNEs, the parties will transition smoothly to a commercial environment where CLEC can obtain products and services from SBC on a wholesale basis via options such as resale, access tariffs and separately negotiated agreements. As this Commission is well aware, leaving even one issue open for debate typically results in the parties having to seek Commission intervention to settle their disputes. SBC's language will avoid that situation.
Should the agreement include a definition of SSP service?	3	1.1.141	***"Service Switching Point" (SSP) is a telephone central office switch equipped with a Signaling System 7 (SS7) interface.***	TelCove agrees to the SBC proposal.	Deliberately omitted.	SBC objects to including this language in this new ICA because USTA II provided SBC relief from having to offer SS7 as a UNE.
1) Are the insurance limits requested by SBC reasonable? 2) Can TelCove rely on its Umbrella Insurance policy to meet the insurance limits specified by SBC?	4	4.7, 4.7.1, 4.7.2	4.7 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, ***which minimum insurance coverage and limits may be provided for by either basis or umbrellas policies or any combination***	1) No. SBC's proposed insurance levels are commercially unreasonable and anti-competitive. The coverage levels represent a significant increase from levels in its prior agreements with TelCove and upon information and belief with its other vendors. The proposed higher levels represent a radical increase in insurance coverage that translates directly into increased cost SBC is	4.7 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: 4.7.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement. **and**	SBC strongly believes insurance requirements are necessary to protect the Parties' investments in their infrastructure and network facilities including central offices and related equipment, as well as to protect their respective employees from losses resulting from potential injuries and third party liability. Furthermore, each of the parties has a legitimate interest in ensuring

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			thereof, such policies to be provided to the other Party upon request: 4.7.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement. 4.7.2 Commercial General Liability insurance with minimum limits of: ***$1,000,000*** General Aggregate limit; $500,000 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; ***$1,000,000*** Products/Completed Operations Aggregate limit, with a ***$1,000,000*** each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of ***$1,000,000*** **are also required if this Agreement involves collocation.** The other Party must be named as an Additional Insured on the Commercial General Liability policy.	*seeking to impose on TelCove.* 2) Yes. TelCove should be allowed to maintain the reasonable primary insurance coverage levels identified by TelCove or to meet the higher coverage levels proposed by SBC utilizing a combination of primary and umbrella policies. TelCove's language expressly provides for the use of umbrella coverage. Since SBC would be fully protected by the umbrella coverage, the only justification for its refusal to allow the use of such coverage would be to impose a significant and unnecessary cost on TelCove, thus discouraging competition.	***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*** 4.7.2 Commercial General Liability insurance with minimum limits of: **$10,000,000.** General Aggregate limit; $500,000 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.	that the other remains solvent so that the parties can continue to make payments under the interconnection agreement. The amounts proposed by SBC are the absolute minimum commercially reasonable under the circumstances. TelCove will *interconnect with a public switched network* worth many tens of millions of dollars. Indeed, a single tandem switch costs on the order of $10 million dollars. TelCove must recognize that its operations pose a risk to the network, and SBC believes it is not too much to ask TelCove to provide coverage in *the amount of at least that amount. It is very* difficult for SBC to accept that TelCove may choose not to be adequately covered by insurance at these minimum amounts. Insurance is not a costly or an irrational request. SBC has not had an opportunity to review TelCove's "umbrella insurance coverage language" prior to this arbitration being filed, so we are unable to say if this language would be something we'd even consider.
1) Is it appropriate to charge for record order charges, or other fees for each CLEC CABS BAN where the CLEC name is	5	4.9.2.1; 4.9.3.2	4.9.2.1 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. CLEC shall **also**	1) No. TelCove's language would prevent SBC from imposing an additional fee on TelCove for an assignment or mere name change, where there has been no change in TelCove's Operating Company Name	*4.9.2.1 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**	*TelCove must be responsible for the costs* associated with any assignments, transfers, mergers, acquisitions or any other corporate changes they've elected to make as a corporation.

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changing if there is no OCN/ACNA change? 2) Is it appropriate for SBC to act within five days on a company name change request?			submit a new Operator Service Questionnaire (OSQ) to update ***CLEC's OS/DA information to reflect the CLEC Name Change.*** 4.9.3.2 For any CLEC Company Code Change, CLEC must submit ***notice of such CLEC Company Code Change, and SBC-13STATE shall, within five (5) business days from the date such notice is submitted, change CLEC's*** OCN/ACNA for each ***CLEC*** end-user record and/or circuit ID number, as applicable. In addition, CLEC shall submit a new OSQ to update ***its OS/DA information to reflect any new OCN/ACNA's***.	(OCN). SBC seeks to impose significant record order charges. SBC should not be able to interfere with TelCove's business by limiting the economic assignment or transfer of the Agreement. 2) TelCove's language requires SBC to implement a notice of a Company Code Change in a commercially reasonable period of time. TelCove opposes SBC's attempt to collect a service order charge for every change in an OCNA/ACNA on a per circuit basis retroactively. TelCove also opposes the payment of charges for re-stenciling, changing locks and other work with respect to collocation. In most instances, such work is not required on a retroactive basis and serves only to impose an additional and unnecessary expense on TelCove.	**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.** *For any CLEC Company Code Change,* CLEC must submit **a service order changing the** OCN/ACNA for each ***CLEC*** 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 Lawful UNE, as applicable, at the rates**	ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Any change to a company code requires service order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but also throughout the industry in such databases as LERG, which allows the *industry as a whole to properly bill routed* calls, (terminating and originating). When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by a winning Carrier. The issue of changing OCN/ACNA codes is an industry wide problem and after a year and a half of trying to resolve this problem, SBC has recently developed this language. The crux of the issue is that SBC incurs actual costs to implement a CLEC's change

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					specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, changing locks and any other work necessary with respect to Collocation, as jointly determined by the Parties on an individual case basis.	and SBC should have the right to charge appropriate non-recurring, cost-based rates. More than just changing the master database may be involved. The acquisition may require changes to the individual end users records to reflect the correct CLEC information for billing purposes.
Can SBC require advanced written notice and consent of an assignment associated with a CLEC Company Code Change? Is it appropriate for SBC to link its consent to an assignment to the CLEC's cure of any outstanding, undisputed charges owed under the Agreement and any outstanding, undisputed charges associated with the "assets" subject to the CLEC Company Code Change? *Can SBC require the CLEC to tender additional assurances of payment?*	6	4.9.3.1	Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of ***this*** Section 4.9.3.1, "assets" *means any Interconnection, Resale Service,* Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide **SBC-13STATE** with ninety (90) calendar *days of any assignment associated with a* CLEC Company Code Change and obtain **SBC-13STATE**'s consent. **SBC-13STATE** shall not unreasonably to a CLEC Company Code Change; provided, however, **SBC-13STATE**'s consent to any CLEC Company Code Change of any outstanding, undisputed charges owed under this Agreement and any outstanding, undisputed charges associated with the "assets" subject to the CLEC Company Code Change.	1) No. SBC should not be allowed to require ninety (90) days in advance "written" notice associated with a CLEC Company Code Change. SBC should not control TelCove's ability to assign or transfer this Agreement as part of a transfer or acquisition of assets. TelCove's language actually allows for SBC's consent so long as such consent is not unreasonably withheld. SBC unreasonably seeks unfettered discretion to *deny consent.* SBC should not be able to hold assignment hostage to or contingent upon cure of outstanding charges. SBC retains its full contingency of rights and remedies to collect any outstanding charges. It should not be able to leverage its position by prohibiting assignment. 2) No. SBC should not be able to obtain additional assurances of payment under this	Any assignment or transfer of an Agreement associated with the transfer or acquisition of *"assets"* provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 4.9.3.1, "assets" means *any Interconnection, Resale Service,* Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide **SBC-13STATE** with ninety (90) calendar days **advance written notice** of *any* assignment associated with a CLEC Company Code Change and obtain **SBC-13STATE**'s consent. **SBC-13STATE** shall not unreasonably **withhold consent** to a CLEC Company Code Change; provided, however, **SBC-13STATE**'s consent to any CLEC Company Code Change **is contingent upon cure** of any outstanding, undisputed charges owed under this Agreement and any outstanding, undisputed charges associated with the "assets" subject to the	No. A CLEC acquiring another CLEC's interconnection agreement along with its associated assets should be required to cure any outstanding charges owed to SBC prior to SBC providing consent for CLEC to make such assumption. If the agreement does not contain this agreement, a CLEC who has not paid undisputed amounts and is about to be disconnected, could simply reincorporate under a new name and assign the interconnection agreement to the new entity, thereby avoiding any adverse consequence from its failure to pay and requiring SBC to continue providing services for which it is not paid. SBC must have some method to protect itself from financially weakened CLECs.

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				section or any other section of the Agreement.	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.**	
1) Is the assignment of a single customer by CLEC properly defined as a "mass migration" or is a trigger of 500 customers more appropriate? 2) Is a limitation on the provision of 90 days notice for mass migration appropriately limited to only those situations where it is required by "applicable law?" 3) Must a CLEC cure all disputed charges before SBC is obligated to allow the transfer of the customer or assets? 4) Can SBC condition the *assignment on the* requirement that the CLEC tender additional assurances of payment?	7	4.9.4.1	Any assignment or transfer of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement ***involving more than 500 end users*** 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, ***where required by Applicable Law,*** provide **SBC-13STATE** 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, ***undisputed*** charges associated with any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service to be transferred.	1) No. A trigger of 500 customers is more appropriate. SBC's language would potentially make the transfer of a single customer a "mass migration" event. Limiting mass migration requirements to only those situations involving over 500 end users avoids unnecessary administrative expense and artificial barriers to customer switching. 2) Yes. The requirement to provide 90 days notice of a mass migration is appropriate only in those situations where the volume of migrating customers requires special preparation and arrangements by both carriers. *In lower volume situations such* notice should not be required. 3) No. SBC should not be allowed to hold customers hostage as a way to provide itself with another payment remedy. SBC retains its full rights to seek payment for outstanding charges from TelCove without refusing to transfer the customers. Refusing to allow transfer of customers is particularly egregious where as here TelCove has agreed that the acquiring	Any assignment or transfer of any Interconnection, Resale Service, Lawful 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-13STATE** 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, Lawful 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.**	TelCove must be responsible for the costs associated with any assignments, transfers, mergers, acquisitions or any other corporate changes they've elected to make as a corporation. ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Any *change to a company code requires service* order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but also throughout the industry in such databases as LERG, which allows the industry as a whole to properly bill routed calls, (terminating and originating). When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a

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				CLEC must pay all outstanding "undisputed" charges. 4) No. Consistent with TelCove's position opposing all assurances of payment, TelCove deleted SBC's language seeking additional assurances of payment before assignment. Again, SBC should not be *allowed to hold customers hostage as a way* to gain leverage for obtaining payment.		service order to be submitted by a winning Carrier. The issue of changing OCN/ACNA codes is an industry wide problem and after a year and a half of trying to resolve this problem, SBC has recently developed this language. The crux of the issue is that SBC incurs actual costs to implement a CLEC's change and SBC should have the right to charge appropriate non-recurring, cost-based rates. More than just changing the master database may be involved. The acquisition may require changes to the individual end *users records to reflect the correct CLEC* information for billing purposes.
1) Is a CLEC responsible for paying for the submission of a new OSQ to update any OS/DA Rate Reference information and Branding?' 2) In a mass migration context, is a CLEC responsible for re-stenciling, changing locks and any other work necessary with respect to Collocation?	8	4.9.4.2	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, Lawful 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	1) No. The CLEC should not be responsible for paying for the submission of a new OSQ to update any OS/DA rate reference information and branding. 2) No. The referenced charges relate to collocation and in most instances, such modifications are not required for operations.	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, Lawful 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	1) TelCove must be responsible for the costs associated with any assignments, transfers, mergers, acquisitions or any other corporate changes they've elected to make as a corporation. ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), billing systems to identify, inventory, and appropriately bill the services

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			acquiring CLEC's agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding. In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, changing locks and any other work necessary with respect to Collocation, as determined jointly by the acquiring CLEC and **SBC-13STATE** on an individual case basis.		acquiring CLEC's 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 Lawful 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, changing locks and any other work necessary with respect to Collocation, as determined jointly by the acquiring CLEC and **SBC-13STATE** on an individual case basis.	provisioned on each service order. Any change to a company code requires service order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but also throughout the industry in such databases as LERG, which allows the industry as a whole to properly bill routed calls, (terminating and originating). When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by a winning Carrier. The issue of changing OCN/ACNA codes is an industry wide problem and after a year and a half of trying to resolve this problem, SBC has recently developed this language. The crux of the issue is that SBC incurs actual costs to implement a CLEC's change and SBC should have the right to charge appropriate non-recurring, cost-based rates. More than just changing the master database may be involved. The acquisition may require changes to the individual end users records to reflect the correct CLEC information for billing purposes. 2) Regarding Mass Market Migrations - The

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						Batch Hot Cut Process provides for the cutover of "large numbers of lines", however, SBC is not capable of providing CLEC to CLEC cuts via this process. CLEC to CLEC can be performed via the usual coordinated hot cut process via FDT. Here is the definition of Batch Hot Cut (BHC): The BHC process provides enhancements to SBC's existing hot cut process that allows switch based CLECs the ability to convert customers from one telecommunications carrier's circuit switch to either their own circuit switch or a non-ILEC third party switch via basic analog UNE loops. The existing Coordinated Hot Cut and Frame Due Time processes will continue to be available. CLECs will be provided TELRIC based per-line rates that reflect the efficiencies associated with performing hot cuts on a specific volume within a central office. This process is available for 1) UNE-P to UNE-L with or without LNP, 2) Resale to UNE-L with or without LNP or SBC Retail to UNE-L with or with LNP. There are three options available for the BHC and they are: Enhanced Daily Process: 1) New Acquisitions Only 2) Defined Batch Process - New Acquisitions/Migration of Embedded base, volumes of 100 or less and 3) Bulk Project Process - New Acquisitions/Migration of

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						Embedded base with volumes of 101 or more. More detail information can be found on the CLEC-On-Line at: https://clec.sbc.com/clec/ which also lists the rates.
Should referral announcements be provided by one Party to the other Party consistent with the terms of the applicable End User Tariffs such that wholesale referral is in parity with retail referral?	9	4.10 – 4.10.4	4.10 When a End User changes its service provider from **SBC-13STATE** to CLEC or from CLEC to **SBC-13STATE** and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement on the original telephone number that specifies the End User's new telephone number. ***Notwithstanding anything to the contrary in this Section 4, "Referral Announcements shall be provided by a Party to the other Party consistent with and pursuant to the referring Party's applicable End-User tariff(s), provided that if the referring Party customarily provides Referral Announcements in deviation from its applicable End-User tariff(s) when its End-User(s) change their telephone number(s), such party shall provide parity of service regarding Referral Announcements to End-User(s) of the other party.***	Yes. TelCove's language provides that the parties shall provide Referral Announcements to each other in a non-discriminatory manner that reflects the way that each party provides service to its own end users. This equal treatment includes providing the referral announcement "at no additional charge" if that is how each Party treats its own end users.	4.10 When a End User changes its service provider from **SBC-13STATE** to CLEC or from CLEC to **SBC-13STATE** and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement **("Referral Announcement")** on the original telephone number that specifies the End User's new telephone number. 4.10.1.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party customarily provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.2.1 Referral Announcements shall be	SBC objects to the CLEC's request that SBC incorporate language from another ILEC's tariff (in this case, the ILEC is Verizon). SBC specifically disagrees with TelCove's proposed language that speaks to "deviation from its applicable End-User tariff(s). SBC will not agree to language that says we will "deviate from our tariff." SBC's language clearly states that we will provide Referral Announcement service at parity to what SBC currently provides it's end user customers per our retail tariffs and where there are applicable and appropriate charges for our end user customers, it is only fair for the SBC to charge TelCove those same rates. SBC is willing to incorporate a pointer to our retail tariff into this document if that will bring this issue to resolution.

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			4.10.1.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party customarily, ***and at no additional charge***, provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.2.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(I)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, ***at no additional charge***, for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.3.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in Michigan Administrative Rule 484.134 and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, ***at no additional charge*** for a period longer than the above period(s) when its End Users change their telephone		provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(I)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.3.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in Michigan Administrative Rule 484.134 and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.4.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to	

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			numbers, such Party shall provide the same level of service to End Users of the other Party. 4.10.4.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, ***at no additional charge*** for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.		End Users of the other Party.	
Should SBC be allowed to require assurances of payment as a condition of setting the term of the agreement?	10	5.2	The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on date = 2 yrs, provided; however, should CLEC implement (i.e., ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on date = 1 yr. Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until	No. SBC should not be allowed to utilize assurance of payment as a component of Term. TelCove is not opposed to SBC's apparent goal of offering a longer term agreement only to operating carriers. However, SBC is aware that TelCove is an established carrier in the state. Inclusion of a "provided assurance of payment" requirement does not add anything to the "active" context and prejudges whether or not assurances of payment are appropriate. TelCove opposes any assurance of payment provision.	The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on date = 2 yrs, provided; however, should CLEC implement (i.e. **provided assurance of payment,** ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on date = 1 yr (**"Term"**). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after	SBC agrees that many CLECs do have a longstanding billing and payment history with us. However, in some circumstances, CLECs' billing and payment history have not complied with contractual obligations. As a result, CLECs should be required to make a security deposit not only when they are establishing a new relationship, but also when they have not previously demonstrated a good credit history with SBC. SBC does take CLECs' payment history with other SBC owned ILECs into account in determining whether a CLEC has demonstrated a good payment history, however, the determining factor has ultimately be the CLEC's payment history with SBC.

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			terminated by either Party pursuant to Section 5.3.		the expiration of the Term until terminated by either Party pursuant to Section 5.3 **or 5.4**.	
1) Is a reasonable time cure period of at least 45 days appropriate? 2) Is it appropriate to extend the 45 day cure period when the defaulting party has initiated cure and the cure cannot reasonably be completed within the 45 days?	11	5.3	Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful 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 ***a reasonable period of time (but in no event less than*** forty-five (45) calendar days) after written notice thereof ***(the "Cure Period").*** Any termination of this Agreement *pursuant to this Section 5.3 shall* take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within ***the Cure Period provided however that if the defaulting Party has initiated cure and the default cannot be cured within forty-five (45) business days, then the defaulting Party shall be given a reasonable period to cure such breach or default.***	1) Yes. Forty-five days to cure as a minimum is commercially reasonable. This is particularly true where the remedy available to SBC is termination, which would be catastrophic to TelCove's end users, since their calls would not be completed. It would also create havoc with TelCove's business plan. 2) Yes. In those situations where TelCove or SBC have initiated cure but it cannot be done within 45 days, it is economically efficient that the defaulting party be given a "reasonable time" to complete its cure.	Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful 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 5.3 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.**	TelCove's language proposes that the breaching party should have "a reasonable period of time (but in no event less than 45 days" to cure its breach. SBC opposes the CLECs suggested language because it seeks to allow TelCove to breach the ICA and yet suffer no consequences for its breach. Secondly, TelCove's language gives them *a minimum of 45 days to cure it and* then they want an exception to their own proposed "rule" if they have initiated a cure to SBC, but it cannot be done within 45 days, then TelCove wants SBC to give them additional time to cure a breach or default. TelCove's language is too broad. By so loosely defining a set of circumstances in which SBC may terminate the agreement after a material breach, TelCove's language leaves SBC without a remedy. SBC also opposes TelCove's change which would allow additional time for them to cure a breach. SBC believes forty-five days is a reasonable *period of time for TelCove to cure its breach.* This is evidenced by the acceptance of the forty-five day time period by other CLECs.
Is 30 day written notice appropriate before	12	5.4	Deliberately omitted.	This section was deleted by TelCove as inconsistent with the concept that the current	**If pursuant to Section 5.2, this Agreement continues in full force and effect after the**	Nothing in SBC's language in 5.4 talks about 30 day timeframe, so SBC is unclear about

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termination of an expired agreement?				Agreement should continue in effect while the parties seek to negotiate or arbitrate a new agreement. This clause, in conjunction with SBC's proposed language in other parts of Section 5 (including Section 5.6 below) would provide SBC with unfair leverage in future ICA negotiations. A CLEC should not be faced with termination of service or having to purchase all of its services out of retail tariffs if it does not rapidly concede to SBC's positions.	**expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.**	TelCove's issue with our language. SBC's language in 5.2 provides much needed clarity regarding the process for termination and renegotiation. The Act provides for 135 day window to negotiate an interconnection agreement plus a window to *arbitrate it, but it does not address how this* should be handled between the parties. SBC's language will prevent any confusion between the parties as to what the parties should expect with regard to renegotiations.
Upon termination or expiration of the agreement should undisputed amounts be paid promptly with disputed amounts resolved in accordance with the dispute resolution procedures or should disputed amounts be required to be paid by each Party into an escrow account?	13	5.5.2	Each Party shall promptly pay all ***undisputed*** amounts owed under this Agreement;	TelCove agrees to pay any undisputed amounts upon termination of the Agreement. TelCove opposes the creation of an escrow *account for disputed amounts. Such* accounts are inefficient, expensive to administer, engender disputes about when payments should be made from the escrow and are not necessary. The dispute resolution provisions and the other remedies under the Agreement remain available to SBC to seek payment once the disputes have been resolved. In general, TelCove opposes the use of escrow accounts since by design they will always favor the entity with the greatest cash flow, which in this case is SBC.	Each Party shall promptly pay all amounts owed under this Agreement **or place any Disputed Amounts into an escrow *account that complies with Section 8.4* hereof**;	SBC proposes language addressing billing disputes as it handles them today. SBC has escalation procedures in place and if *TelCove does not believe their claim is being* investigated and or handled appropriately, TelCove should avail itself of such escalation procedures. SBC requires any dispute to be provided in writing. SBC also requires that disputes be placed on its designated form as SBC needs the information to investigate and resolve the disputed amount in question. If SBC were required to have a separate process for each CLEC, it could not possibly handle the disputes, let alone in a timely manner. TelCove's proposed language allows TelCove to unilaterally decide what level of detail is necessary to resolve a billing dispute. SBC recognizes there will be

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						situations where the details specified will not be required. However, TelCove should not be permitted to decide when that is the case since it is the Billing Party and which will, therefore, be in the best position to know what details it needs in order to do so. SBC language provides that the Parties may mutually agree upon a lesser level of detail for disputes where the Parties agree that such detail is not necessary.
While the Parties are negotiating or arbitrating a new successor agreement, should the provisions of this agreement continue to govern their relationship?	14	5.6	If either Party serves notice of expiration pursuant to Section 5.2, CLEC shall have ten (10) calendar days to provide **SBC-13STATE** written confirmation if CLEC wishes to pursue a successor agreement with **SBC-13STATE** or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with **SBC-13STATE**, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with **SBC-13STATE** under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement. ***Notwithstanding any attempted termination pursuant to Section 5.2 or 5.4, during the period of such***	Yes. Any other result would place TelCove, which is dependent upon the services it receives from SBC at a tremendous disadvantage in any subsequent negotiation and arbitration. It amounts to placing a large thumb on the negotiation scales in favor of SBC, since TelCove would be faced with the uncertainty (and price increases) associated with not having in place an operative interconnection agreement. TelCove's proposed language would ensure that it can negotiate and arbitrate without fear of having the status quo changed and its core business disrupted during the process of obtaining the successor agreement that it is entitled to under law.	If either Party serves notice of expiration pursuant to Section 5.2 **or Section 5.4**, CLEC shall have ten (10) calendar days to provide **SBC-13STATE** written confirmation if CLEC wishes to pursue a successor agreement with **SBC-13STATE** or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with **SBC-13STATE**, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with **SBC-13STATE** under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.	If the Parties are negotiating a successor agreement, the parties will continue to perform their obligations under the agreement until the successor agreement becomes effective. The Act provides for a 135 day window to negotiate an interconnection agreement and a 135 day window to arbitrate it, but does not address how this should be handled between the parties.

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			negotiations or any arbitration of such negotiations relating to a successor agreement, the terms of this Agreement shall continue to govern the Parties' relationship.			
Can SBC limit to ten months the maximum amount of time that the agreement will continue past its Term while negotiation on a successor agreement occur?	15	5.7	If written notice is not issued pursuant to Section 5.2, the rates, terms and conditions of this Agreement shall continue in full force and effect until 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.	No. In certain circumstances, the parties may need to extend the negotiation window by stipulation. This provision would eliminate that possibility, thus inhibiting the intended negotiation process.	If written notice is not issued pursuant to Section 5.2, 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-13STATE received CLEC's Section 252(a)(1) request.**	The Act provides for a 135 day window to negotiate an interconnection agreement and a 135 day window to arbitrate it, but the Act does not address how this should be handled between the parties. Adding SBC's language will prevent any confusion between the parties as to what the parties should expect with regard to renegotiations. For instance, the language speaks to the length of time that the original agreement rates, terms and conditions would continue to apply; so that includes the 270 day window (negotiations & arbitrations) plus another 30 days for preparation, signature and filing of the agreement (10 months). The language also addresses what happens if a CLEC requests renegotiations and then withdraws such a request.
1) Should SBC be allowed to require Adequate Assurance of Payment? 2) If SBC is allowed to require Adequate Assurance of Payment, what form and amount is appropriate?	16	7.0 – 7.10	Deliberately omitted.	SBC has proposed particularly onerous changes overall that relate to billing and payment issues. These include SBC's new assurance of payment and escrow schemes. Overall, SBC is attempting to implement a pay-and-dispute type policy that is not commercially reasonable. The first issue is whether or not SBC is	**ASSURANCE OF PAYMENT** **7.1 Upon request by SBC-13STATE, CLEC will provide SBC-13STATE with adequate assurance of payment of amounts due (or to become due) to SBC-13STATE** **7.2 Assurance of payment may be requested by SBC-12STATE if:**	Yes. SBC believes that a deposit requirement is a standard business operating practice for companies when extending credit and thus should be determined by reasonable measures developed by SBC to reduce its risk of loss from nonpayment of undisputed bills. SBC is offering deposit language that allows

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				entitled to demand a security deposit or some other form of assurance of payment. TelCove asserts that SBC's attempt to do so should be denied. Second, if so, when should a deposit be required? Should the Commission determine that a deposit is allowed, the trigger and the amount of the deposit should be carefully constrained to prevent SBC from using the requirement as a financial weapon to damage TelCove as a competitor. Third, should the deposit requirement be implemented on a state-by- state basis? TelCove believes that the assurance of payment is neither necessary nor appropriate. Assurances of payment are an extraordinary remedy. Assurances of payment are not appropriate given TelCove's history of performance. Such assurances also impair competition by unduly restricting a new entrant's cash flow. Moreover, assurances of payment are not the only remedy available to SBC. Even without deposits, SBC retains its full suite of rights to seek recovery in court for any failure by TelCove to pay. Although TelCove believes that no	**7.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC-13STATE for charges incurred as a CLEC; or** **7.2.2 in SBC-12STATE's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or** **7.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC-12STATE (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 9.3); or** **7.2.4 CLEC admits its inability to pay its**	SBC to assess a reasonable deposit in the event that a CLEC customer is or becomes credit impaired. Therefore, SBC proposes that the deposit be in an amount equal to three (3) months anticipated charges. SBC's proposed language is objective and reasonable for both Parties. It balances the need of SBC to protect itself and also protect those good paying CLECs from the requirement to pay a deposit. SBC believes that deposits that are retained should be applied at the holder's discretion. SBC believes that assessing a deposit based on individual billing account number would be both administratively burdensome and also could lead to the inappropriate movement of services between billing account numbers. SBC believes that deposits should be assessed on an overall customer basis. SBC agrees that an irrevocable Bank Letter of Credit can satisfy its deposit requirements provided it meets the criteria specified in SBC's proposed assurance of payment language.

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				assurances of payment are warranted given the longstanding business relationship between the two companies, in the unlikely event that the Commission determines that assurances of payment are appropriate, SBC's language grants SBC far too much discretion. TelCove has not proposed alternative language given its position that no payment assurances should be implemented. In the event that the Commission determines that payment assurances are allowed, TelCove would propose payment assurance language that would provide reasonable protection against unilateral demands by SBC for assurance of payments. At a minimum, any assurance of payment obligation should only be triggered if TelCove has failed to pay undisputed amounts (after two notices and appropriate time to cure) within the prior twelve months. TelCove should also have an opportunity to contest SBC's application of the relevant criteria that were used by SBC in that a deposit is required, without facing the threat of unilateral termination. Broad subjective triggers, such as SBC's, are susceptible to discriminatory application. In addition, the total amount of the payment	**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.** **7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC-12STATE's option, consist of** **7.3.1 a cash security deposit in U.S. dollars held by SBC-12STATE ("Cash Deposit") or** **7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC-12STATE naming the SBC-owned ILEC(s) designated by SBC-12STATE as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to SBC-12STATE ("Letter of Credit").** **7.3.3 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**	

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				assurances should be limited to no more than a single month's payment. Such a limit would prevent SBC from utilizing the deposit as a financial weapon for anti-competitive fashion. Finally, TelCove believes that any payment assurance requirement should be triggered on a state by state basis only. Negative payment history in one state should not impact customers in another state. See WC Docket No. 02-202, Verizon Petition for Emergency Declaratory And Other Relief, Policy Statement (December 23, 2002).	**determined by SBC-12STATE, for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC-12STATE under this Agreement.** **7.3.3.1 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount that would exceed one (1) month's projected bill for CLEC's initial market entry; provided, however, that after three (3) months of operation, SBC SOUTHWEST REGION 5-STATE may request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to CLEC.** **7.3.3.2 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Oklahoma in an amount that**	

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					would exceed two times projected average monthly billing to CLEC. 7.4 To the extent that SBC-12STATE 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. 7.5 A Cash Deposit will accrue interest, however, SBC-12STATE will not pay interest on a Letter of Credit. 7.6 SBC-12STATE 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: 7.6.1 CLEC owes SBC-12STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or 7.6.2 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	

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					creditors or is subject to a receivership or similar proceeding; or 7.6.3 The expiration or termination of this Agreement. 7.7 If SBC-12STATE draws on the Letter of Credit or Cash Deposit, upon request by SBC-12STATE, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3. 7.8 Notwithstanding anything else set forth in this Agreement, if SBC-12STATE makes a request for assurance of payment in accordance with the terms of this Section, then SBC-12STATE shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished SBC-12STATE with the assurance of payment requested; provided, however, that SBC-12STATE will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section. 7.8.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, SBC-12STATE may also invoke the provisions set forth in Section 9.5 through Section 9.7. 7.9 The fact that a Cash Deposit or Letter of Credit is requested by SBC-12STATE shall in no way relieve CLEC from timely	

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					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. **7.10 For adequate assurance of payment of amounts due (or to become due) to SBC CONNECTICUT, see the applicable DPUC ordered tariff.**	

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DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND TELCOVE
PART 1 – GENERAL TERMS & CONDITIONS, COLLOCATION, INTERCARRIER COMPENSATON, INTERCONNECTION TRUNKING REQUIREMENTS (ITR), NETWORK INTERCONNECTION METHODS (NIM), OUT OF EXCHANGE TRAFFIC, AND STRUCTURE ACCESS – Issues 1 - 67

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
1) May a CLEC utilize any form of legal tender or must they utilize ACH as the only acceptable form of payment? 2) Is it appropriate to make it mutual that neither party is liable for delays in funds caused by the other party or its financial institution and that each party is responsible for its own banking fees?	17	8.3	CLEC shall make all payments to **SBC-12STATE** via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC-12STATE**. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and **SBC-12STATE** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by **SBC-12STATE** no later than the Bill Due Date of each bill or Late Payment Charges will apply. ***Neither Party*** is ***shall be*** liable for any delays in receipt of funds or errors in entries caused by ***the other Party*** or Third Parties, including **CLEC's** financial institution***s. Each Party shall be*** is responsible for its own banking fees.	TelCove seeks to pay via a check drawn on immediately available funds, the traditional way of paying business invoices. SBC's language would require TelCove to utilize a banking network system, ACH, that TelCove does not utilize today. TelCove's language simply provides for mutuality such that both parties are held liable for delays in receipt of funds or errors in entries caused by the other party.	CLEC shall make all payments to **SBC-12STATE** via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC-12STATE**. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and **SBC-12STATE** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by **SBC-12STATE** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **SBC-12STATE** is **not** liable for any delays in receipt of funds or errors in entries caused by **CLEC** or Third Parties, including **CLEC's** financial institution**s. CLEC** is responsible for its own banking fees.	SBC will accept the CLEC's LAST sentence. The CLEC is trying to treat ACH like automatic draft or withdrawal made (initiated by SBC) from the CLEC's checking account and that is not what ACH is. ACH is where the CLEC MUST initiate the transaction as the paying party to SBC. Nothing happens until the CLEC acts. The bank will not send SBC the funds until the CLEC instructs them to. The CLEC's language is a way to manipulate the fact that they have responsibility. Since the CLEC initiates the transaction they will always know the transaction took place and/or when it was late, therefore the CLEC is liable for delays in SBC receiving its money and the CLEC is also liable for errors since they instruct their bank when to send, how much to send and where to send funds to
May SBC impose a late payment fee for a CLEC's refusal to utilize ACH?	18	8.3.1	Deliberately omitted.	SBC's language is simply another method to prevent TelCove from paying by the commercially reasonable method of a check. SBC has a commercial obligation to timely process payments made in legal United States tender in readily available funds.	**Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.**	SBC's request that TelCove pay a late charge for late payments has nothing to do with the fact that TelCove does not want to utilize the ACH method to pay its bills. Late payment charges are nothing new or unusual, all credit card companies and other companies (i.e. utilities) charge late fees when their customers are late paying a bill or miss a payment.
1) Is the creation of an Escrow mechanism appropriate?	19	8.6 – 8.8.1	Deliberately omitted.	No. TelCove opposes the creation of any escrow mechanism. Such mechanisms are inefficient, expensive to administer and	**8.6 Requirements to Establish Escrow Accounts.** **8.6.1 To be acceptable, the Third**	SBC has experienced large financial losses from CLECs who have either gone bankrupt or otherwise exited the business. Many of these

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2) If an Escrow mechanism is to be created, what terms and conditions should govern?				burdensome. In addition, the requirement to establish escrow accounts reflects yet another way that SBC is seeking to impose commercially unreasonable payment and billing dispute mechanisms. TelCove believes that the requirement to create escrow accounts is particularly damaging where, as here, SBC has significantly more free cash flow than TelCove. SBC's proposed requirement that TelCove pay cash into an escrow and then dispute SBC's charges is subject to considerable potential abuse. SBC would be free to send wildly inaccurate bills, and TelCove would be required to tie up its cash (via a payment to escrow) for a considerable time while the "dispute" was resolved. If TelCove refused, it would face unilateral termination of service by SBC. The ability to place a bill in dispute should not be premised upon payment into an escrow account. Such a mechanism defeats the entire purpose of the dispute mechanism, which is to address billing errors in a manner that does not adversely impact the business of the incorrectly billed party.	**Party escrow agent must meet all of the following criteria:** **8.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;** **8.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and** **8.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.** **8.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:** **8.6.2.1 The escrow account must be an interest bearing account;** **8.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;** **8.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for**	CLECs filed frivolous or inflated disputes in order to avoid collection action. This ultimately resulted in larger losses for SBC. SBC understands the CLECs concerns regarding depositing disputed amounts into escrow. It is not SBC's intent that the waiver of escrow should enable CLECs to dispute all future bills, due to the criteria having been met, and thereby forcing SBC to finance the CLECs business

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					serving as the Third Party escrow agent; **8.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and** **8.6.2.5 disbursements from the escrow account will be limited to those:** **8.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or** **8.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or** **8.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.** **8.6.3 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.** **8.6.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.** **8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying**	

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					Party, the Parties will cooperate to ensure that all of the following actions are completed: **8.7.1 the Billing Party will 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 *and interest charges* assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;** **8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;** **8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and** **8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges**	

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					the Billing Party is entitled to receive pursuant to Section 8.1.5. **8.8 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 8.7.1.1 and Section 8.7.1.3 are completed within the times specified therein.** **8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.**	
Should there be a requirement that disputed amounts be paid into escrow?	20	9.3.3 9.3.4	Deliberately omitted.	No. TelCove opposes the creation of any escrow mechanism. Such mechanisms are inefficient, expensive to administer and burdensome. In addition, the requirement to establish escrow accounts reflects yet another way that SBC is seeking to impose commercially unreasonable payment and billing dispute mechanisms. TelCove believes that the requirement to create escrow accounts is particularly damaging where, as here SBC has significantly more free cash flow than TelCove. SBC's proposed requirement that TelCove pay cash into an escrow and then	**9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and** **9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal**	SBC has experienced large financial losses from CLECs who have either gone bankrupt or otherwise exited the business. Many of these CLECs filed frivolous or inflated disputes in order to avoid collection action. This ultimately resulted in larger losses for SBC. SBC understands the CLECs concerns regarding depositing disputed amounts into escrow. It is not SBC's intent that the waiver of escrow should enable CLECs to dispute all future bills, due to the criteria having been met, and thereby forcing SBC to finance the CLECs business.

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				dispute SBC's charges is subject to considerable potential abuse. SBC would be free to send wildly inaccurate bills, and TelCove would be required to tie up its cash (via a payment to escrow) for a considerable time while the "dispute" was resolved. If TelCove refused, it would face unilateral termination of service by SBC. In addition, the requirement to pay money into escrow before a payment would be placed "in dispute" defeats the purpose of the dispute mechanism, which is to address billing errors in a manner that does not adversely impact the business of the incorrectly billed party. Moreover, SBC is not without a remedy if no escrow is created. SBC continues to possess all of its legal rights to seek payment in full via the robust dispute resolution provisions of the Agreement as well as actions at law. An escrow mechanism is inefficient and subject to discrimination against TelCove and should not be adopted.	**Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.**	
Is it appropriate to limit a default to each particular state?	21	9.5.1 9.5.1.1 9.5.1.2 9.6.1 9.7.2	9.5.1 If the Non-Paying Party fails ***within a specific state*** to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into	Default should be limited to each particular state. Negative payment history in one state should not impact customers in another state. See WC Docket No. 02-202 Verizon Petition for Emergency Declaratory And	9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow	SBC's concern with CLEC's proposed language is that they could request that SBC's service center transfer funds from one state to another cover delinquencies for bills, thus potentially game the system. It is not SBC's

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			an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options: 9.5.1.1 suspend ***in that state*** acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or 9.5.1.2 suspend ***in that state*** completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.	Other Relief, Policy Statement (December 23, 2002).	account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written *demand to the Non-Paying Party for* payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options: 9.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or 9.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, *functions, facilities, products or services* under this Agreement.	intent to totally pull down any CLEC's service however, we do want to reserve the right to do so when they don't pay. If they're delinquent in a state and don't pay, then they should lose service in the at state or at a minimum, lose the ability to submit new orders in that state.

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			9.6.1 If the Non-Paying Party fails ***in that state*** to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, 9.7.2 If the Non-Paying Party fails ***in that state*** to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,		9.6.1 If the Non-Paying Party fails ***in that state*** to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, 9.7.2 If the Non-Paying Party fails ***in that state*** to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,	
As a corollary to the fact that no party is allowed to dispute an item on a bill over 12 months old should back-billing be prohibited beyond one year?	22	10.1.3	***Notwithstanding anything contained in this Agreement to the contrary, neither Party shall bill the other Party for previously unbilled charges that are for services rendered more than one (1) year prior to the current billing date. For any "back-billed" charges to be valid, the billing Party must separately list such charges from current charges and identify such charges as "back-billed" charges."***	TelCove proposes, on a mutual basis, that neither Party can bill for services that are rendered more than one year before the current billing date. A one year limitation on backbilling allows both parties ample time to find and correct any missed billing, while allowing each party to have business certainty for all earlier periods. A one year backbilling limitation also focuses each Party on rapid and correct billing. Should a billing dispute arise, resolution will be greatly simplified because only relatively recent records will be readily available. Moreover, TelCove's proposal follows from	Deliberately omitted.	Although the Parties endeavor to provide the most accurate bill possible, it is only commercially reasonable to expect an occasional back-billing or credit claim to arise. One need for back-billing or back-crediting arises from commission orders that have a retroactive effect on rates. It is only appropriate that the Billing Party should be able to take advantage of any increases in rates determined in such a proceeding for the same period of time that the Billed Party is entitled to receive the advantage of any reduction in rates ordered in such a proceeding. SBC believes that a twelve month limitation on back-billing and credit claims should apply. This is a reasonable period of time for any error that occurred to

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				SBC's language, which seeks to impose a limit on TelCove's ability to challenge or dispute items or charges on bills that are over one year old. Without TelCove's proposed backbilling limitation, TelCove would be left with no recourse to challenge bills for periods extending back beyond one year.		be discovered by either Party and brought to the attention of the other Party, or the application of any retroactive change in rates ordered by the Commission. (See SBC's language allowing a Billed Party to bring a dispute for billing issues where the bill has been paid for a twelve month period.)
1) Is appropriate for SBC to require a CLEC to file a notice of dispute within 29 days of the bill due date or waive its ability to dispute the invoice or is the CLEC proposal to attempt to provide the evidence within thirty days but in no event later than 90 days appropriate prior to waiver? 2) Must a CLEC pay the disputed amount into an escrow account before the invoices will be considered disputed?	23	10.4.1	If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center [**SBC MIDWEST REGION 5-STATE** Service Center; **SBC-7STATE** Local Service Center **(LSC)**; **SBC CONNECTICUT** Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish **SBC-13STATE** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. ***CLEC shall attempt to provide the information and evidence required by this Section within thirty (30) calendar days following the Bill Due Date; however,*** failure to provide the information and evidence required by this	1) In the event TelCove commences a billing dispute under the agreement, it will attempt to provide all supporting evidence within thirty (30) calendar days after the Bill Due Date. This period is one calendar day longer than SBC's proposed period, but it has the advantage of coinciding with the end of the subsequent billing period. (SBC uses thirty (30) calendar day billing periods.) Occasionally, however, billing disputes can be either so sizeable or so complicated that it would be unreasonable to require TelCove to submit all supporting evidence by that time or waive its dispute. In recognition of such commercial realities, TelCove has proposed that a waiver of the dispute shall not occur unless TelCove fails to provide the required information within ninety (90) calendar days. A ninety (90) calendar day period should provide TelCove with a reasonably sufficient time to further research its disputes and gather the required evidence.	If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center [**SBC MIDWEST REGION 5-STATE** Service Center; **SBC-7STATE** Local Service Center **(LSC)**; **SBC CONNECTICUT** Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish **SBC-13STATE** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. **To be deemed a "dispute" under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth**	OBF (Order and Billing Forum) is the national forum that addresses what should or should not appear on bills so that there is a uniform compliance throughout the Telecommunications Industry. If CLEC has issues with the billing content, they need to have their respective OBF representative bring these matters before the OBF for resolution. While OBF does set the guidelines, SBC has been working with CLECs since last April to address billing concerns via the CLEC User Forum. This Forum was created by the Texas Commission to address concerns of the CLECs. SBC includes the schedule and meeting notes on its SBC CLEC Online web site. SBC also makes available to CLECs the USOC manual on the CLEC Online web site and believes it should continue to provide USOCs to CLECs via the CLEC Online in order to save resources and costs to all Parties. USOCs are determined by Telcordia and CLEC may always utilize Telcordia as an additional source.

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			Section 10.4.1 not later than ***ninety*** (***90***) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.	In addition, it is worth noting that while a twenty-nine (29) day window may seem more than adequate for a heavily staffed company like SBC, TelCove and other CLECs do not have the advantage of such extensive human resources. Therefore, while TelCove has agreed to attempt to provide all required documentation within thirty (30) calendar days, it must have the ability to extend that time period to ninety (90) days, if necessary. 2) For the reasons explained in more detail in, among others, Issue 19, escrow provisions should not be included in this agreement.	**in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account.** Failure to provide the information and evidence required by this Section 10.4.1 not later than **twenty-nine** (**29**) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.	
Should the time for dispute resolution be measured from the Date of Dispute or from the Bill Due Date?	24	10.4.2	The Parties shall attempt to resolve Disputed Amounts appearing on **SBC-13STATE**'s current billing statements thirty (30) to sixty (60) calendar days from the ***date of dispute*** (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.	TelCove accepts SBC's language.	The Parties shall attempt to resolve Disputed Amounts appearing on **SBC-13STATE**'s current billing statements thirty (30) to sixty (60) calendar days from the **Bill Due Date** (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.	The CLEC language is to vague and ambiguous. It is undefinable. The CLEC could claim that they made a dispute at any time including a date before they received a bill. SBC needs to be given adequate notice and time to research the dispute. CLEC's language would truncate (shorten) the time frame in which SBC could reasonably resolve the dispute.
Is it appropriate to include mutuality with 10.4.1 by including language providing for SBC's waiver	25	10.4.4	Any notice of Disputed Amounts given by **SBC-13STATE** to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the	Any billing disputes commenced by SBC should be subject to the same waiver provisions as are imposed on TelCove. Accordingly, TelCove has proposed to insert	Any notice of Disputed Amounts given by **SBC-13STATE** to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the	No. SBC can not agree to CLEC's inserted language as the CLECs language attempts to put severe restrictions (limitations) on SBC's

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after 90 days if it fails to properly dispute?			account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC-13STATE** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC-13STATE**, furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify **SBC-13STATE** of the status of the dispute and the expected resolution date. ***Failure to provide the information and evidence required by this Section 10.4.4 not later than ninety (90) calendar days following the Bill Due Date shall constitute SBC-13STATE's irrevocable and full waiver of its right to dispute the subject charges.***	a sentence at the end of this section that mirrors the proposed waiver language for section 10.4.1 of the General Terms & Conditions. That is, if TelCove is deemed to have waived its dispute rights if it does not submit the required information to SBC within ninety (90) days, then SBC should be deemed to have waived its dispute if it does not gather the requisite information and present it to TelCove within ninety (90) days. There is simply no compelling reason for the SBC-proposed differential treatment of each party's billing disputes.	account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC-13STATE** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC-13STATE**, furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify **SBC-13STATE** of the status of the dispute and the expected resolution date.	ability to back bill beyond 90 days. There are situations that could impact this, i.e. if SBC is conducting an audit, and finds that there are errors and the CLEC owes SBC money for services they've ordered and we've provisioned, SBC should be able to collect that money. Additionally, if a state commission grants SBC *the ability to collect retroactive money from* CLECs for rate changes approved by the commission that could go back several months, SBC should again, be able to collect that money. SBC would propose that the CLEC make the language reciprocal, meaning that if they want to limit SBC's ability to back bill, to no more then 90 days, the CLEC should be limited by the exact time frame (90 days) in their ability to request any type of credit from SBC and the CLEC should also be limited to receiving any type of credit from SBC even for state PUC's orders that say they're entitled to it.
Should audits be limited to no more than one a year? Is a ten percent or five percent variance revealed by a prior audit the correct	26	11.1	Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the **"Auditing Party"**) may audit the other Party's (the **"Audited Party"**) books,	Yes. Because the audit process is burdensome and disruptive to everyday business operations, audits should be permitted no more than once per year.	Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the **"Auditing Party"**) may audit the other Party's (the **"Audited Party"**) books,	SBC's language describes when the parties may audit each other. This language is necessary to ensure that SBC may audit not only the CLEC's bills to SBC , but also records sent by CLEC upon which SBC's bills are

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trigger for additional audits?			records, data and other documents, as provided herein, ***no more than*** once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement **("service start date")** for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder.	TelCove has adopted this position relating to the number of audits as a result of SBC's refusal to increase its proposed five percent (5%) trigger for additional audits. A ten percent (10%) variance would better reflect normal variation and would avoid unnecessary audits. TelCove agrees that additional audits should be permitted within a year if the audited party's records are so faulty that their ongoing reliability is reasonably questioned. A five percent (5%) threshold, however, is far too strict to justify the added burden and disruption that such additional audits would occasion.	records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement **("service start date")** for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. **Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.**	based. SBC must be able to ensure that CLEC is properly recording calls, properly routing calls, etc. The audit provision is SBC's method by which to do so. SBC's proposed audit requirements should be included in the agreement, including provisions governing how and when the parties are allowed to audit each other. SBC's proposal appropriately provides that the parties may audit the other parties' books, records, data and other documents once each Contract Year. The time limitation is appropriate because SBC should not be required to perform an audit more than once a year. Rather, once a contract year (each twelve month period from the effective date of the agreement) is reasonable. In the event a previous audit ascertains an uncorrected net variance or error in invoices in the audited party's favor, SBC believes that a subsequent or follow-up audit can be performed. SBC believes that in the event an error is found, the parties should be allowed to conduct a subsequent audit to insure compliance with the agreement. SBC language provides for an initial audit once a year with a follow-up audit if there is an error

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						with an aggregate value of at least five percent (5%) of the amounts payable by the auditing party for the audit time frame. SBC believes that follow-up audits must be warranted and should not be conducted on a whim or without sufficient cause. It must be noted that previous audits correct errors, so the incidence of ongoing problems will be miniscule in those very rare occasions where they may occur at all.
Should either party be able to request that a third party auditor be hired? If so, which party should bear the cost?	27	11.1.2 11.1.5 11.16	11.1.2 Such audit shall be conducted by an independent auditor acceptable to both Parties; provided, however, the independent auditor's fees and expenses ***shall be paid by the Auditing Party***. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any	1) Because an auditor is tasked with resolving a dispute between the parties, it is essential that the auditor be independent. Therefore, the Commission should reject SBC's proposed language, which would permit SBC employees to determine the facts underling a dispute between the parties. In the event an independent audit reveals an undercharge caused by the actions of the audited party, then the audited party should compensate the auditing party for the undercharge during the first full billing cycle after the Parties have agreed on the accuracy of the audit results. Despite SBC's objection to this method of handling any discovered undercharges, it is consistent with SBC's proposed method for handling any discovered overcharges.	11.1.2 Such audit shall be conducted **either by the Auditing Party's employee(s) or** an independent auditor acceptable to both Parties; provided, however, **if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of** the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing	It is appropriate for an auditing party employee to conduct the audit. SBC agrees that the parties should be able to use an independent auditor if they prefer. However, it is appropriate for the auditing party to use their own employees for the purpose of conducting an audit when they choose to do so. If the parties were required to use an independent auditor, the auditing party would have to invest in detailed training of complicated terms that are unique to the telecommunications industry. For example, an SBC employee is familiar with Universal Service Order Codes (USOCs) and records. Training an auditor who does not have this industry-specific knowledge would be time consuming and costly. However, if the audited party is not comfortable with an auditing party's employee performing the audit, SBC's

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			undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge ***in the first full billing cycle after the Parties have agreed upon the accuracy of the audit results***, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (depending on the SBC-owned ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available. 11.1.6 **A**udits shall be performed at Auditing Party's expense.	2) Any audits should, furthermore, be conducted at the auditing party's expense. This approach creates an incentive to commence the audit process only when a dispute is of such a magnitude as to justify the mutual burdens associated with the audit. That is, this approach favors resolution of small disputes through less burdensome means.	error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (depending on the SBC-owned ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available. 11.1.6 **Except as may be otherwise provided in this Agreement,** audits shall be performed at Auditing Party's expense, **subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.**	language provides that they may request an independent auditor. If the audited party requests an independent auditor, it is reasonable that they should pay one-quarter (1/4) of the independent auditor's fees. The parties appear to agree that each party will be responsible for its own expenses in connection with the conduct of the audit. However, in the event that an audited party requests an independent auditor, it should pay one-quarter (1/4) of the independent auditor's fees. In addition, if an undercharge is discovered the audited party should compensate the auditing party and pay interest.
1) Should a dispute about audits be handled by the	28	11.1.7	Any disputes concerning audit results shall be referred to the Parties' respective	In the event of a dispute regarding audit results, the parties should resolve that	Any disputes concerning audit results shall be referred to the Parties' respective	It is appropriate for an auditing party employee to conduct the audit. SBC agrees

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dispute resolution provisions of the agreement?			personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, ***either Party may resort to the dispute resolution procedures set forth in this Agreement***..	dispute through the dispute resolution procedures set forth in the agreement. This approach has the advantage of continuing a uniform approach to all matters of discord between the parties. Additionally, TelCove's proposal avoids imposing the burden of additional audits on either or both of the parties who will have, at that point, just completed a previous audit. Because audits can be time-consuming and interruptive tasks, it is in both parties' best interests to minimize the unnecessary expense and burden of repetitive audits. By requiring the parties to address any audit-related disputes through the contractual dispute resolution process, the parties have proper incentive to conduct a neutral and reliable audit in the first instance. Additionally, considering that SBC has proposed to have its own employees conduct any initial audit, it is very likely that any dispute with the initial audit results will likely be commenced by TelCove. In light of this likelihood, SBC's proposed language further represents an attempt to unnecessarily increase TelCove's cost of disputing SBC claims.	personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, **either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.**	that the parties should be able to use an independent auditor if they prefer. However, it is appropriate for the auditing party to use their own employees for the purpose of conducting an audit when they choose to do so. If the parties were required to use an independent auditor, the auditing party would have to invest in detailed training of complicated terms that are unique to the telecommunications industry. For example, an SBC employee is familiar with Universal Service Order Codes (USOCs) and records. Training an auditor who does not have this industry-specific knowledge would be time consuming and costly. However, if the audited party is not comfortable with an auditing party's employee performing the audit, SBC's language provides that they may request an independent auditor. If the audited party requests an independent auditor, it is reasonable that they should pay one-quarter (1/4) of the independent auditor's fees. The parties appear to agree that each party will be responsible for its own expenses in connection with the conduct of the audit. However, in the event that an audited party requests an independent auditor, it should pay one-quarter (1/4) of the independent auditor's fees. In addition, if an undercharge is discovered the audited party should compensate the

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						auditing party and pay interest.
What is the proper scope of the licenses being provided by SBC?	29	14.5.2	Deliberately omitted.	An integral and implied component of SBC's statutory duty to provide certain UNEs, functions, facilities, products, or services to TelCove is the obligation to ensure that TelCove has the legal right to use any associated intellectual property. SBC, knowing that it possesses certain statutory obligations to provide UNEs, etc., to CLECs, has an affirmative duty to ensure that all associated intellectual property rights will be applicable to any CLECs gaining access to these statutorily required UNEs and using them for statutorily sanctioned purposes If this was a purely commercial agreement between the parties, then SBC's position might be tenable; however, given SBC's known statutory imperatives, this is an entirely different situation altogether. Essentially, SBC asks the Commission to condone a behavior by which it might purport to meet its statutory obligations to provide TelCove with UNEs and interconnection facilities yet leave TelCove facing the risk of substantial legal liability for the use of the things provided. It strains credulity to believe that Congress intended for this type and degree of "hidden danger" to lurk behind the ameliorative language of the Telecom Act. Moreover, the Commission should note that	**SBC-13STATE hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Lawful Unbundled Network Elements (including combining with CLEC's Network Elements) in SBC-13STATE's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with Lawful UNEs are vendor licenses and warranties and are a part of the Intellectual Property rights SBC-13STATE agrees in Section 14.5.1.1 to use its best efforts to obtain.**	SBC has no obligation to negotiate with third party intellectual property owners for an expansion and extension of those licensed rights so that a CLEC can use the unbundled network element in a way that SBC does not. If the CLEC intends to use the element in a different manner than SBC does, the CLEC is solely responsible for obtaining this right, and bears the risk if it fails to obtain the intellectual property license(s) it needs. For example, if the CLEC plans to use the unbundled network element in combination with some other element not contemplated by SBC's license from the vendor, the CLEC is solely responsible for negotiating with the vendor directly.

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				SBC is in a much better position than TelCove to negotiate the appropriate intellectual property licenses and to determine whether or not such licenses are required. TelCove has no way of knowing which third-party vendors provide components of the UNEs, and the costs of such negotiation by SBC should already be included in the cost of providing the UNEs to TelCove.		
Is SBC liable for its failure to comply with license term and other intellectual property issues set forth in Section 14.5.2?	30	14.5.3	Deliberately omitted.	Yes. As discussed above, SBC should be obligated to ensure that all necessary intellectual property rights are conferred to TelCove simultaneously with the provision of any requested UNEs, functions, facilities, products, or services. As an incentive for SBC to abide by that obligation, it is appropriate to remove SBC's proposed contractual language, which provides that SBC shall not be responsible to TelCove if the UNEs and other services and facilities provided to TelCove were so provided without appropriate permission from any third-party intellectual property right owner(s).	**SBC-13STATE does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's Interconnection with SBC-13STATE's network and unbundling and/or combining SBC-13STATE's Lawful Unbundled Network Elements (including combining with CLEC's Network Elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with Lawful UNEs shall be vendor's indemnities and are a part of the Intellectual Property rights SBC-13STATE agrees in Section 14.5.1.1 to use its best efforts to obtain.**	SBC has a duty to use its best efforts to modify intellectual property licenses it has obtained from its vendors of network equipment to include within those licenses the same rights for requesting carriers [principally CLECs that utilize unbundled network elements] that SBC has with regard to the intellectual property of the vendors. SBC is not obligated to provide the rights itself. SBC is not obligated to warrant or indemnify CLECs against intellectual property infringement. The extension of the rights should leave the vendor, as the owner of the intellectual property, in the role of indemnitor of the CLECs. SBC is merely facilitating the license modification transaction for the CLECs.

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DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND TELCOVE
PART 1 – GENERAL TERMS & CONDITIONS, COLLOCATION, INTERCARRIER COMPENSATON, INTERCONNECTION TRUNKING REQUIREMENTS (ITR), NETWORK INTERCONNECTION METHODS (NIM), OUT OF EXCHANGE TRAFFIC, AND STRUCTURE ACCESS – Issues 1 - 67

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
Should time for notice by mail be extended from five days to the 7 to 10 days recommended by the post office?	31	17.1.5.3	***seven (7)*** calendar days after mailing in the case of first class or certified U.S. Postal Service, or	Seven (7) to ten (10) days is the United States Post Office's recommended time for delivery post 911. A period of five (5) days is insufficient to ensure delivery of critical notices.	**five (5)** calendar days after mailing in the case of first class or certified U.S. Postal Service, or	SBC withdraws its disputed language of five (5) calendar days and accepts TelCove's proposal for seven (7) calendar days. This issue is resolved between the Parties.
Are blanket authorizations acceptable when they are limited to only those situations where they are allowed by the FCC or the applicable state law?	32	24.1.1	Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. ***Blanket representations of authorizations shall be permitted in those instances where blanket authorizations are permitted by the FCC rules or applicable state regulation.*** A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge ***for the time period required by***	Yes. When permitted by applicable federal and/or state law, TelCove should be able to present blanket representations of end-user authorizations for the change of the end-user's local exchange carrier. The proposed TelCove language is mutual in nature, so the Commission may assume that SBC has no dispute with this aspect of the language. Instead, it appears that SBC's refusal to include this language in the agreement stems solely from its desire to force TelCove to incur the greater administrative costs that will result from having to submit individual representations of authority, even though applicable law might permit the more administratively efficient blanket representation process. In short, TelCove is not seeking some additional privilege outside the scope of this agreement; it is merely seeking access to its pre-existing legal entitlements, if any, to use a more efficient process.	Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.	TelCove's request for blanket representations of authorizations is vague and ambiguous and is likely to lead to post interconnection disputes. TelCove does not specify under what specific circumstances "blanket" authorizations can be used, which will create confusion in administering this agreement. SBC is uncertain what TelCove means by its proposed "for the time period required by the FCC's rules or applicable state regulation."

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			the FCC's rules or any applicable state regulation.			
		COLLOCATION – PHYSICAL & VIRTUAL				
Is it proper to allow TelCove to contract a Tier 1 removal vendor when they are SBC approved?	33	Physical – 20.1(C); 20.1.1	20.1 (C) Remove terminations at both ends of cable (e.g. power, timing, grounding, and interconnection) and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level. ***Collocator also has the option of contracting an SBC-13STATE approved Tier 1 removal vendor to remove the cabling beyond the Company rack level versus the Company performing this work and billing the Collocator.*** 20.1.1 For complete space discontinuance, Collocator will not be responsible for repairing floor tile damaged during removal of relay racks and equipment, nor will Collocator be responsible for cable mining (removal). Instead the company will perform those tasks. Collocator will pay for those tasks through rate elements listed in 20.6.1. ***Collocator also has the option of contracting an SBC-13STATE approved Tier 1 removal vendor to remove the***	TelCove seeks approval to utilize an SBC approved Tier 1 vendor to remove cabling beyond the Company rack level. TelCove has in the past, with certain SBC affiliates, been allowed to perform this task. The cabling was removed without any difficulty and at a significant cost savings to TelCove. TelCove found that it could hire directly the exact same Tier 1 vendor (certified by SBC) to perform the task at a significantly reduced rate. As the entity that bears the cost of the removal, TelCove believes that it should have the option of directly contracting with an SBC approved and certified vendor.	20.1 (C) Remove terminations at both ends of cable (e.g. power, timing, grounding, and interconnection) and cut cables up to the Company rack level. Collocator must use a Company approved Tier 1 vendor for this procedure and that vendor must follow TP76300 guidelines for cutting and capping the cable at the rack level. 20.1.1 For complete space discontinuance, Collocator will not be responsible for repairing floor tile damaged during removal of relay racks and equipment, nor will Collocator be responsible for cable mining (removal). Instead the company will perform those tasks. Collocator will pay for those tasks through rate elements listed in 20.6.1.	No. The issue is not whether TelCove may contract an SBC Approved Tier 1 removal vendor, but rather whether they have access beyond the Company rack level. Beyond the rack level, removal of cabling involves security to the SBC network, along with other Collocator cabling on the racking. Not all SBC Approved Tier 1 Vendors are certified for removal of cabling, so SBC must perform the removal of cabling and bill the Collocator according.

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			cabling beyond the Company rack level versus the Company performing this work and billing the Collocator.			
Should TelCove be liable for paying all charges prior to the release of the collocation facilities?	34	Physical – 20.2.2 Virtual – 18.1.2.2	20.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on the Physical Collocation Arrangement to be reassigned until the date the Company turns over the Physical Collocation Arrangement to the CLEC Assignee. Any disputed charges shall be subject to the dispute resolution provisions herein. ***The CLEC will pay all undisputed charges and any disputed charges will be subject to the Dispute Resolution provisions herein.*** CLEC Assignee's obligation to pay monthly recurring charges for a Physical Collocation Arrangement will begin on the date the Company makes available the Physical Collocation Arrangement to the CLEC Assignee. 18.1.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on each Virtual Collocation Arrangement to be reassigned until the date the Company turns over the Virtual Collocation Arrangement to the CLEC Assignee. ***The CLEC will pay all undisputed charges and any disputed charges will be subject to the Dispute Resolution provisions herein.***	SBC's proposed language would improperly allow SBC to hold TelCove's ability to freely and economically assign its collocation arrangements hostage. SBC is seeking payment leverage that it is not entitled to. TelCove will pay all undisputed charges and submit disputed charges to the dispute resolution provisions of the agreement. This is a reasonable approach. As in other sections, SBC is seeking to utilize leverage its financial size to leverage payment from TelCove, even though the charges have been disputed. TelCove should not be force to "pay first" and then dispute before it can transfer its collocation arrangements.	20.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on the Physical Collocation Arrangement to be reassigned until the date the Company turns over the Physical Collocation Arrangement to the CLEC Assignee. Any disputed charges shall be subject to the dispute resolution provisions herein. **The Company's obligation to turn over the Physical Collocation Arrangement shall not arise until all such charges are paid.** CLEC Assignee's obligation to pay monthly recurring charges for a Physical Collocation Arrangement will begin on the date the Company makes available the Physical Collocation Arrangement to the CLEC Assignee. 18.1.2.2 Exiting CLEC will be liable to pay all nonrecurring and monthly recurring collocation charges on each Virtual Collocation Arrangement to be reassigned until the date the Company turns over the Virtual Collocation Arrangement to the CLEC Assignee. **The Company's obligation to turn over the Virtual Collocation Arrangement shall not arise until all such charges are paid.**	Yes. It is TelCove's responsibility to pay all charges, not just the undisputed charges when the exiting a collocation space, either physical or virtual. TelCove's attempt at seeking only undisputed charges is a delay tactic to paying the complete bill and once the facilities have been released, SBC may never be able to recoup the charges it has a right to receive for the services rendered.

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Should TelCove be exempted from the space reassignment process for Exiting CLECs when a corporate restructuring is involved?	35	Physical – 20.2.3 Virtual – 18.1.2.3	20.2.3 An Exiting CLEC may not reassign Physical Collocation space in a central office where a waiting list exists for Physical Collocation space, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger, ***corporate restructuring*** or complete purchase of the Exiting CLEC's assets within the specific central office. 18.1.2.3 An Exiting CLEC may not reassign Virtual Collocation space in a central office where a collocation waiting list exists for Virtual Collocation, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger, ***corporate restructuring*** or complete purchase of the Exiting CLEC's assets within the specific central office.	To the extent that TelCove seeks to more efficiently arrange its corporate structure, either for operational or purely financial purposes (e.g. removing one layer of local operating companies to gain region-wide efficiencies) it should be allowed to freely reassign its collocation space to the "new" TelCove entity without losing the space. TelCove therefore inserted "corporate restructuring" into the list of exempted modifications such as a merger or purchase of the Exiting CLEC's assets. SBC's language would give it far too much control over TelCove's corporate structure and would discourage TelCove from undertaking corporate restructurings that TelCove believes would result in more efficient operations.	20.2.3 An Exiting CLEC may not reassign Physical Collocation space in a central office where a waiting list exists for Physical Collocation space, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger or complete purchase of the Exiting CLEC's assets within the specific central office. 18.1.2.3 An Exiting CLEC may not reassign Virtual Collocation space in a central office where a collocation waiting list exists for Virtual Collocation, unless all CLECs on the waiting list above the CLEC Assignee decline their position. This prohibition does not apply in the case of an acquisition, merger, or complete purchase of the Exiting CLEC's assets within the specific central office.	No. Corporate restructuring is not the same as an acquisition, a merger or a complete purchase. The term "corporate restructuring" is too vague and can involve an adjustment to the officer level to meet a span of control measure, it can be the replacement of the Chairman or the President of TelCove or it can be as broad as changing the ACNA.
Should there be limitations on the access of virtual collocation?	36	Virtual – 1.1	1.1 This Section of the Appendix provides for Virtual Collocation for the purpose of interconnecting to **SBC-13STATE** for ***(i)*** the transmission and routing of Telephone Exchange Service and Exchange Access pursuant to 47 U.S.C. § 251 (c)(2) ***of the Act, and the transmitting and routing of telecommunications services pursuant to applicable effective FCC regulations and judicial rulings, or (ii)*** **and** ***obtaining***	Access to virtual collocation should be allowed for the transmission and routing of telecommunications services. TelCove is proposing only that virtual collocation be allowed to the fullest extent of the law, as demonstrated in applicable FCC regulations and case law. SBC appears to be seeking to restrain by this contract language TelCove's legal right	1.1 This Section of the Appendix provides for Virtual Collocation for the purpose of interconnecting to **SBC-13STATE** for the transmission and routing of Telephone Exchange Service and Exchange Access pursuant to 47 U.S.C. § 251 (c)(2) **and for** access to **SBC-13STATE's** Lawful Unbundled Network Elements ("Lawful UNEs") **for the provision of a telecommunications service** pursuant to	Yes. These limitations are clearly set out in the Telecommunications Act pursuant to 47 U.S.C. § 251(c)(2). TelCove's language attempts to go beyond the provision of a telecommunications service to other unspecific services through "federal regulations or judicial rulings".

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			access to **SBC-13STATE's** Lawful Unbundled Network Elements ("Lawful UNEs") pursuant to 47 U.S.C. § 251(c)(3) of the Act when the virtually collocated telecommunications equipment (hereafter referred to as equipment) is provided by the Collocator. The terms "Telephone Exchange Service", "Exchange Access" and "Network Element" are used as defined in 47 U.S.C. § 153(47), 47 U.S.C. § 153(16), and 47 U.S.C. § 153(29) of the Act, respectively.	to virtual collocation for all relevant services.	47 U.S.C. § 251(c)(3) of the Act when the virtually collocated telecommunications equipment (hereafter referred to as equipment) is provided by the Collocator. The terms "Telephone Exchange Service", "Exchange Access" and "Network Element" are used as defined in 47 U.S.C. § 153(47), 47 U.S.C. § 153(16), and 47 U.S.C. § 153(29) of the Act, respectively.	
		INTERCARRIER COMPENSATION				
What is the proper definition and scope of Section 251(b)(5) Traffic?	37	5.1	5.0 RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(b)(5) TRAFFIC ***5.1 Section 251(b)5 Traffic shall mean telecommunications traffic originated and terminated:*** ***a. within the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange tariff on file with the applicable state commission or regulatory agency; or*** ***b. within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to,***	Section 251(b)(5) reciprocal compensation applies to traffic which originates and terminates in the same local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission or other appropriate regulatory authority regardless of the technology chosen by the originating or terminating parties to transmit the traffic. The choice of either party to use IP technology to originate, transmit and/or terminate a call should have no bearing on the statutory requirement under Section 251(b)(5) of the 1996 Telecommunications Act for the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The responsibility of	5.0 RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(b)(5) TRAFFIC **5.1 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:** **a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or** **b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This**	Section 251(b)(5) reciprocal compensation applies to calls exchanged between parties that are physically within the same local or mandatory local calling area - without regard to the NPA/NXX's of the calling party and the called party. Accordingly, SBC's proposed language properly excludes from Section 251(b)(5) reciprocal compensation calls terminated to customers not physically located in the same SBC local calling area as the calling party – *i.e.*, Foreign Exchange (FX) calls. SBC's language provides comprehensive boundaries that includes traffic exchanged between end users that are located in: 1) the same SBC exchange area; or 2) different SBC exchange areas that share a common mandatory local calling area within an SBC exchange area, as

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			mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes. ***Section 251(b)(5) traffic includes traffic originated, transmitted or terminated using IP enabled technology. For reciprocal compensation purposes, traffic originated and transmitted using IP enabled technology originates at the point of interconnection with the public switched network.***	the originating party to compensate the terminating party exists irregardless of the technology chosen to originate, transmit or terminate the traffic. TelCove's proposed definition is consistent with the FCC's conclusions in the recent Vonage decision. See WC Docket No. 03-211, In re: Vonage Holdings Corporation Petition and Order of the Minnesota Public Utilities Commission Memorandum Opinion and Order (released November 12, 2004). In Vonage, the FCC determined that VOIP traffic could not be separated into a local or long distance component. The FCC also stated that VOIP service or IP enabled services are not geography based. SBC's attempts to restrict IP enabled traffic to a particular geographic region therefore fails. Ultimately the FCC must speak further on the proper treatment of VOIP calls for access charge purposes. SBC's language would prejudge the outcome of the FCC's future determinations by imposing access charges and dedicated access trunk requirements on IP enabled traffic. Such prejudgment should not be incorporated into this agreement. Instead, TelCove's technology neutral definition of 251 (b)(5) traffic should be adopted.	**includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.**	defined in SBC's Tariff. Further, the FCC's *ISP Compensation Order* classified and developed an inter-carrier compensation mechanism for ISP-Bound traffic. In so doing, the FCC made clear that the ISP-bound traffic it was addressing, like traffic that is subject to section 251(b)(5) reciprocal compensation, is traffic between two parties in the same local calling area. This is *illustrated in paragraph 90 of the ISP Compensation Order*, which states that the FCC intended the same intercarrier compensation rates, terms and conditions to apply to ISP-bound traffic as applies to section 251(b)(5) voice traffic.
What is the appropriate form of intercarrier	38	SBC - 1.3, 7.2.1-7.2.2.1, 7.4-7.5	1.3 The provisions of this Appendix do not apply to traffic originated over services	Foreign Exchange Traffic is no different than any other Section 251(b)(5) Traffic. The	1.3 The provisions of this Appendix do not apply to traffic originated over services	TelCove is proposing that Foreign Exchange Traffic should be compensated as "local"

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compensation for FX and FX-like traffic including ISP FX Traffic?		TelCove - 1.3, 7.2.1, 7.2.11, 7.4-7.5	provided under local Resale service pursuant to 251 (c)(4) of the Act. SBC-13STATE will compensate the terminating carrier in accordance with this Appendix for ***FX Traffic***, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic that originates from an end user that is served by a carrier providing telecommunications services utilizing SBC-13STATE's Resale Service. 7.2.1 FX Traffic ***is Section 251 (b)(5) Traffic in the exchange where the dial tone is received and*** is subject to ***Section 5.*** 7.2.1.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject ***Section 6 for traffic terminated in the exchange where the FX dial tone is received*** 7.4 The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 6.1) could also be exchanged outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Sections 5 and 6 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of:	compensation mechanism should be based on the nature of the traffic at the point where dial tone is received. The end-user customer places a local call. The costs involved by the originating party to originate and terminate the call are no different than any other local call. The physical location of the customer purchasing FX service is irrelevant for purposes of determining compensation. Compensation should be based on the dialing pattern of the customer originating the call. In the case of FX Traffic, the originating party places a local call and terminates the call to the other Party no different than any other local call. Thus, TelCove's proposed language properly treats FX calls as any other local call for purposes of compensating the terminating party.	provided under local Resale service pursuant to 251 (c)(4) of the Act. SBC-13STATE will compensate the terminating carrier in accordance with this Appendix for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic that originates from an end user that is served by a carrier providing telecommunications services utilizing SBC-13STATE's Resale Service. 7.2.1 FX Traffic is **not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is** subject to **a Bill and Keep arrangement in SBC 2-STATE, SBC MIDWEST REGION 5-STATE, SBC CONNECTICUT, SBC ARKANSAS, SBC KANSAS, SBC MISSOURI AND SBC OKLAHOMA.** 7.2.1.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject **to a Bill and Keep arrangement. "Bill and Keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating FX traffic that originates on the other party's network.** **7.2.2 Pursuant to the Texas Commission Arbitration Award in Docket 24015, the Oklahoma Commission Arbitration Award in AT&T Arbitration**	traffic, which is inappropriate. The terminating carrier should not be compensated for the transport and termination of FX traffic, as TelCove suggests in Section 1.3. FX traffic is akin to intraLATA toll traffic that terminates outside the applicable local calling area. Such traffic is non-Section 251(b)(5) Traffic and as such would typically be subject only to interstate and intrastate access charges. The FCC's *First Report and Order* states that "traffic originating or terminating outside of applicable local area would be subject to interstate and intrastate access charges," and not reciprocal compensation. *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 15499, 16013, ¶ 1035 (1996). As such, neither Reciprocal Compensation rates nor the FCC's interim ISP terminating compensation rates apply for the transport and termination of FX and FX-like traffic including ISP FX Traffic. SBC-13STATE proposes the following compensation arrangements for FX Traffic: • In the states of Arkansas, Kansas and Missouri, bill and keep is the proper compensation mechanism for voice and

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			• Optional EAS Traffic • IntraLATA Interexchange Traffic • InterLATA Interexchange Traffic • 800, 888, 877, ("8YY") Traffic • Feature Group A Traffic • Feature Group D Traffic 7.5 The Parties agree that, for the purposes of this Appendix, either Parties' End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 5 and 6 above do not apply. The applicable rates, terms and conditions for: (b), Optional EAS Traffic are set forth in Section 8;, (c) 8YY Traffic are set forth in Section 11; (d) Feature Group A Traffic are set forth in Section 7.2; (e) Feature Group D Traffic are set forth in Section 13; (f) IntraLATA Toll Traffic are set forth in Section 14; and/or (g) InterLATA Traffic are set forth in Section 13.		**Cause No. PUD 200000587, Order No. 449960 and the Connecticut Commission order in Docket No. 01-01-29, the transport and termination compensation for Virtual FX, Dedicated FX, and FX-type Traffic will be originating access charges in SBC TEXAS ,SBC OKLAHOMA and SBC CONNECTICUT** **7.2.2.1 To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to originating access charges in SBC OKLAHOMA and a bill and keep arrangement in SBC TEXAS and SBC CONNECTICUT.** 7.4 The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 6.1) could also be exchanged outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Sections 5 and 6 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of: • **FX Traffic** • Optional EAS Traffic • IntraLATA Interexchange Traffic	ISP FX traffic. • In Connecticut, FX Traffic should be compensated at the applicable switched access rates as provided in the applicable tariffs, excluding IntraLATA ISP FX Traffic which is subject to a bill and keep arrangement in accordance with the Commission's order in Docket No. 01-01-29. • In Ohio, FX Traffic should be subject to applicable switched access rates. • In OKLAHOMA FX Traffic should be compensated at originating access rates, in accordance with the Oklahoma Commission Arbitration Award in AT&T Arbitration Cause No. PUD 200000587, Order No. 44996. • In Texas, FX Traffic should be compensated at originating access rates, in accordance with Texas Commission Arbitration Award in Docket 24015, excluding ISP-Bound FX Traffic which is subject to a bill and keep arrangement. InterLATA FX traffic will be subject to SBC-13STATE's access tariffs, interstate or intrastate, whichever is applicable.

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					• InterLATA Interexchange Traffic • 800, 888, 877, ("8YY") Traffic • Feature Group A Traffic • Feature Group D Traffic 7.5 The Parties agree that, for the purposes of this Appendix, either Parties' End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 5 and 6 above do not apply. The applicable rates, terms and conditions for: **(a) FX Traffic are set forth in Section 7.2;** (b), Optional EAS Traffic are set forth in Section 8;, (c) 8YY Traffic are set forth in Section 11; (d) Feature Group A Traffic are set forth in Section 7.2;, (e) Feature Group D Traffic are set forth in Section 13; (f) IntraLATA Toll Traffic are set forth in Section 14; and/or (g) InterLATA Traffic are set forth in Section 13.	
Is transit traffic an appropriate type of traffic for inclusion in the Agreement?	39	TelCove - 4.5	***4.5 Where one party is performing a transiting function, the transiting party will pass the Signaling Data, including OCN, for traffic received from the originating third party, including any SBC UNE-P carrier customers (or other wholesale customers) whether such customer purchase local switching from SBC pursuant to Section 251, 271, 201 or***	Transit traffic is traffic from a TelCove end user that "transits" over the SBC network to reach an end user located on a third party's network (e.g., an independent LEC or a CMRS provider). Transit Traffic also includes the reverse scenario; traffic flowing from an end user of a third party's network to a TelCove end user that transits over the SBC network.	4.5 Intentionally Left Blank	No. It is SBC's position that transit service is a non 251(b) or (c) service and is not the subject of mandatory negotiations between the parties and is not arbitrable. Accordingly the Commission must decline TelCove's attempt to arbitrate this issue. As a non 251(b) or (c) service, transit service should be negotiated separately.

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			via any other regulated or non-regulated arrangement and whether such arrangement is publicly or privately filed. If the Signaling Data – including OCN is not received from the originating third party, the transiting Party aggrees to be billed as the default originator.	SBC provided transit service under the prior interconnection agreement between the Parties. It is now unilaterally seeking a dramatic change in longstanding industry practice and network design. SBC seeks to "deregulate" and remove transit traffic from this successor interconnection agreement between the parties. SBC has asserted that it is not obligated to provide transit service pursuant to Section 251 and Section 252. TelCove disagrees. The provision of transit traffic is interconnection governed, at a minimum, by Section 251(a)(1) of the Telecommunications Act of 1996 and therefore should be included in this Agreement. Section 251 (a)(1) requires all telecommunications carriers "to interconnection directly or indirectly with the facilities and equipment of other telecommunications carriers." See 47 U.S. C. A. § 251 (1)(a). Transit traffic fits within this type of interconnection and was intended to be addressed by Section 251. Absent transit service under this Agreement (or TelCove's agreement to enter into a new stand alone contract at dramatically higher than cost allegedly "market based" rates for		In the event that the Commission decides, over SBC's objection, to address Transit Service in this proceeding, it should adopt SBC's proposed language in the Transit Traffic Service Appendix submitted herewith.

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				transit) a TelCove customer's call to the third party carrier's customer would not be completed unless TelCove had a direct trunk arrangement with the wireless or other third-party carrier. Since the Telecommunications Act of 1996 Section 251(c)(1) requirements do not apply to non-incumbents, TelCove does not have any leverage to require third-party carriers to negotiate interconnection agreements for the exchange of transit traffic in a timely manner. In many cases no real "market" exists for transit facilities, leaving TelCove with no economical option except to pay SBC for this service. Without transit service TelCove would be impaired to provide local exchange services in a similar manner as SBC. Such a result would be directly contrary to the concept of global interoperability and interconnection envisioned by the 1996 Act. Other states, including Connecticut, have found that SBC had an obligation to provide transit service. See Docket No. 02-01-23 Petition of Cox Connecticut Telcom, L.L.C. for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates Decision (January 15, 2003)(appeal pending in federal district court). Since the time this Commission approved		

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				the prior interconnection agreement with transit service provisions similar to those SBC now seeks to strike, neither the FCC nor the courts have relieved SBC of its obligation to indirectly interconnect under either Section 251 (a)(1) or 251(b)(5). As the United States Court of Appeals for the District of Columbia Circuit recently found, the FCC has not definitively addressed whether or not transit traffic is an Unbundled Network Element but has deferred consideration of that issue until it completes its rulemaking on intercarrier compensation. Thus, the DC Circuit ruling indicates that the transit issue remains open and that the FCC has yet to act. See United States Telecom Association v. Federal Communications Commission, 359 F.3d 554 (March 2, 2004)("USTA II"). The fact remains that only SBC has a ubiquitous network that interconnects with virtually all other carriers operating in its footprint. At low traffic volumes, it would be prohibitively expensive for carriers to directly trunk to each other, instead of utilizing their shared interconnection with SBC. It is far more efficient for SBC to be required to		

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				provide a transit facility (while recovering its costs) than to require all carriers to construct trunks among themselves for limited volumes of traffic. The continued availability of transit service in this interconnection agreement is consistent with a competitive marketplace, prior Commission rulings, federal and state law, efficient network design and public policy. Accordingly, the Commission should require SBC to offer transit at TELRIC or a similarly reasonable rate as part of this Agreement.		
Should SBC be billed as the default originator for calls where CPN is not provided from an end user that is served by a third-party LEC?	40	TelCove - 15.3	15.3 ***Neither party is under any obligation to terminate traffic from a third party which does not contain CPN without compensation. For such Traffic the originating party for the reasons of compensation shall be the party handing off the traffic.***	The terminating party should be compensated for all traffic terminated on its network. To the extent one party delivers third-party traffic to the other party, the party delivering the traffic must either identify the originating party for the traffic or take responsibility for paying the required terminating compensation to the terminating party. The party delivering the traffic to the terminating party should know the identify of the party which originated the traffic or which delivered the traffic to the intermediary transit carrier. Absent proper billing records from the intermediary transit carrier, the terminating carrier has no means of identifying the originating party. TelCove is not disputing the requirement to enter into the proper interconnection or	15.3 Intentionally Left Blank	No. SBC should not be billed as the default originator for traffic that originates from a CLEC that purchases any combination of Network Elements from SBC whereby SBC provides the end office switching on a wholesale basis. It is extremely rare that a call that originates from an SBC switch does not have CPN. This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. In those instances where CPN is not provided, terms and conditions are offered, which TelCove has agreed to, that address compensation of such traffic. If the percentage of calls passed with CPN is greater than 90 percent, all calls exchanged without CPN information will be billed as either local

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				transport and termination agreements with the originating party. The only issue in dispute is the responsibility to identify the originating party and compensate the terminating party when the originating party has not been adequately identified.		traffic or intraLATA toll traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than 90 percent, all calls passed without CPN will be billed as intraLATA toll traffic.
1) To the extent that CLEC is unable to provide records formatted according to the MECOD and MECB guidelines, should the Parties agree to explore additional options regarding the assembling, recording and editing of message detail records necessary to allow for accurate billing of traffic. 2) Should a multiple bill/ singe tariff method be used for billing Switched Exchange Access Service jointly provided by the Parties via MPB arrangements?	41	12.2-12.3	12.2 The Parties will establish MPB arrangements in order to provide Switched Access Services via the respective carrier's Tandem Office Switch, in accordance with the MPB guidelines contained in the Ordering and Billing Forum's MECOD and MECAB documents, as amended from time to time. ***To the extent that CLEC is unable to provide records formatted according to the MECOD and MECB guidelines, the Parties agree to explore additional options regarding the assembling, recording and editing of message detail records necessary to allow for accurate billing of traffic.*** 12.3 Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/***multiple*** tariff method. As described in the MECAB document, each Party will render a bill in	1) Should TelCove not be able to provide records in the exact format based on its existing system, TelCove believes it is reasonable to require that the parties explore additional records options. 2) TelCove believes that a multiple bill/multiple tariff arrangement is more appropriate terminology.	12.2 The Parties will establish MPB arrangements in order to provide Switched Access Services via the respective carrier's Tandem Office Switch, in accordance with the MPB guidelines contained in the Ordering and Billing Forum's MECOD and MECAB documents, as amended from time to time. 12.3 Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/**single** tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The residual interconnection charge (RIC), if any, will be billed by the Party providing the end office function.	(1) No. The CLEC should send SBC an Access Usage Record (AUR) for each call so that SBC-13STATE bill its portion of the service to the Interexchange Carrier (IXC), Access Usage Records are specific Category 11 records that are used for Meet Point Billing. This process is documented in the industry standard MPB document, MECAB and as such should be followed by the Parties. (2) Yes. SBC's language adheres to the process documented in the MECAB document in Section 4.3.2. As such, this is the only reasonable method to use for billing.

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			accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The residual interconnection charge (RIC), if any, will be billed by the Party providing the end office function.			
Should TelCove be able to charge an intrastate/ intraLATA or interstate/IntraLATA Access rate higher than the incumbent?	42	10-10.1, 14.1-14.2	**10. PRIMARY TOLL CARRIER ARRANGEMENTS** 10.1 A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Service for its own end user customers and potentially for a third party ILEC's end user customers. In this third party ILEC arrangement, the PTC would receive the third party ILEC end user intraLATA toll traffic revenues and pay the third party ILEC for originating these toll calls (originating access and billing & collection charges). The PTC would also pay the terminating access charges on behalf of the third party ILEC. In those **SBC-13STATE**s where Primary Toll Carrier arrangements are mandated and for the intraLATA toll traffic which is subject to a PTC arrangement and where **SBC-13STATE** is functioning as the PTC for a third party ILEC's end user customers: (i) **SBC-13STATE** shall deliver such intraLATA toll traffic that originated from that third party ILEC and terminated to CLEC as	Yes. TelCove is entitled to charge the rates in its approved intrastate access tariff as approved by the Commission. This is particularly true since the FCC has no jurisdiction over intrastate access rates which have been established in some cases to meet public policy objectives to ensure high service quality while maintaining reasonable basic local rates.	**10. PRIMARY TOLL CARRIER ARRANGEMENTS** 10.1 A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Service for its own end user customers and potentially for a third party ILEC's end user customers. In this third party ILEC arrangement, the PTC would receive the third party ILEC end user intraLATA toll traffic revenues and pay the third party ILEC for originating these toll calls (originating access and billing & collection charges). The PTC would also pay the terminating access charges on behalf of the third party ILEC. In those **SBC-13STATE**s where Primary Toll Carrier arrangements are mandated and for the intraLATA toll traffic which is subject to a PTC arrangement and where **SBC-13STATE** is functioning as the PTC for a third party ILEC's end user customers: (i) **SBC-13STATE** shall deliver such intraLATA toll traffic that originated from that third party ILEC and terminated to CLEC as	No. SBC's proposed language that caps TelCove's intrastate switched access rates and interstate access rates is consistent with the intent of the FCC's access charge reform and with the current rule at 47 C.F.R. § 61.26(b)(1) (providing that a "CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of the "rate charged for such services by the competing ILEC" or the lower of an FCC benchmark or the CLEC's rate charged prior to June 2001). While TelCove may have the right to promulgate a rate that differs from SBC's, TelCove must make a showing as to the legitimacy of that newly-promulgated rate. Until such time, consistent with the ideals of 47 C.F.R. 61.26, rate symmetry in the form of a price cap at the incumbent's rates should apply.

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			the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. **SBC-13STATE** shall pay the CLEC on behalf of the originating third party ILEC for the termination of such intraLATA toll traffic at the terminating access rates as set forth in the CLEC's Intrastate Access Service Tariff; and/or 14.1 For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge applicable as set forth in each Party's Intrastate Access Service Tariff, 14.2 For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff.		the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. SBC-13STATE shall pay the CLEC on behalf of the originating third party ILEC for the termination of such intraLATA toll traffic at the terminating access rates as set forth in the CLEC's Intrastate Access Service Tariff, **but such compensation shall not exceed the compensation contained in the SBC-13STATE Intrastate Access Service Tariff in the respective state;** and/or 14.1 For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, **but such compensation shall not exceed the compensation contained in an SBC-13STATE's tariff in whose exchange area the End User is located.** 14.2 For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and	

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					originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff **but such compensation shall not exceed the compensation contained in the SBC-13STATE's tariff in whose exchange area the End User is located. Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem is used to terminate traffic.**	
1) Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Service Traffic? 2) What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?	43	SBC - 17-17.2	***17.0 Switched Access Traffic*** ***17.1 For purposes of this Agreement only, Switched Access Traffic shall mean traffic that originates from outside the ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission and delivered to an end user located inside the ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including any traffic that (i) originates over a circuit switch, uses Internet Protocol (IP)***	All IP enable traffic is not "information services" or "switched access" traffic and thus does not have to be terminated over feature group access trunks nor be charged based on switched access tariffs. In addition, "information services" traffic is not automatically defined as "switched access" traffic or charged switched access charges. TelCove agrees that "switched access" traffic should be terminated over feature group access trunks except as noted in subsections (i) to (iv) and should be subject to tariff access charges. However, all IP enabled traffic is not "switched access" traffic. Regarding subsection (iii), TelCove believes that either party could receive traffic from an IXC for which the number has been ported	**17.0 Switched Access Traffic** **17.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC 13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or**	(1) It is SBC's position that such traffic is exempt from reciprocal compensation under 47 C.F.R. 51 § 701 which defines the scope of transport and terminating pricing and explicitly excludes interstate or intrastate exchange, information access or exchange services from reciprocal compensation, and the Agreement should therefore do so as well. That FCC rule remains in effect today. Finally, the Agreement should provide that any other category of traffic that this Commission or the FCC holds exempt from reciprocal compensation is exempt as between the TelCove and SBC. See SBC's position in Issue (b) below which further addresses the appropriate charges for such traffic. (2) SBC's position is that, unless and until the FCC rules otherwise, all Switched

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			transport technology for transport to the local calling area where the terminating party is located (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and terminates over a Party's circuit switch ,and/or (ii) originates from the end user's premises in IP format, uses circuit switching transport technology for transport to the local calling area where the terminating party is located and terminates over a Party's circuit switch, and/or (iii) originates over a circuit switch and uses circuit switching transport technology for transport to the local calling area where the terminating party is located and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Appendix, traffic originated and transmitted using IP enabled technology is not Switched Access Traffic. All Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:	and the IXC has failed to perform the necessary LNP query. Switched access charges apply to traffic which terminates in a different local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission or other appropriate regulatory authority than the calling area where the traffic originated regardless of the technology chosen by the originating or terminating parties to transmit the traffic. However, the choice of either party to use IP technology to originate, transmit and/or terminate a call does not necessarily make the traffic switched access traffic or "information services" traffic as SBC suggests. This Commission should not classify all IP-PSTN traffic as "switched access" traffic. Only traffic which terminates in a different local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission or other appropriate regulatory authority than the calling area where the traffic originated should be designated as "switched access" traffic. TelCove's proposed definition is consistent with the FCC's conclusions in the recent Vonage decision. See WC Docket No. 03-	**multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:** (iii) Switched Access Traffic delivered to **SBC** from an Interexchange Carrier (IXC) where the terminating number is ported to another **CLEC** and the IXC fails to perform the Local Number Portability (LNP) query; and/or	Access Traffic, as defined below, must be terminated over feature group access trunks (B or D)(except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any such traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN). SBC's position is that all Switched Access Traffic is subject to switched access charges

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			(iii) Switched Access Traffic delivered to ***either Party*** from an Interexchange Carrier (IXC) where the terminating number is ported to another ***LEC*** and the IXC fails to perform the Local Number Portability (LNP) query; and/or	211 In re: Vonage Holdings Corporation Petition and Order of the Minnesota Public Utilities Commission Memorandum Opinion and Order (released November 12, 2004). In Vonage, the FCC determined that VOIP traffic could not be separated into a local or long distance component. The FCC also stated that VOIP service or IP enabled services are not geography based. SBC's attempts to restrict IP enabled traffic to a particular geographic region must fail. Ultimately the FCC must speak further on the proper treatment of VOIP calls for access charge purposes. SBC's language would prejudge the outcome of the FCC's future determinations and seeks to impose access charges and dedicated access trunk requirements on IP enabled traffic. Such prejudgment should not be incorporated into this agreement. Instead, TelCove's technology neutral definition of 251 (b)(5) traffic should be adopted.		is supported by long-standing FCC precedent and rules, under which any provider that uses ILEC local exchange switching facilities, including an information service provider, is subject to the baseline obligation to pay access charges, unless specifically exempted. With respect to PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic"), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to access charges under the FCC's rules. *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephone Services are Exempt from Access Charges*, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (*Access Charge Avoidance Order*). Consistent with the FCC's *Access Charge Avoidance Order*, this Commission should find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over feature group access trunks. With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and

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						regulations, providers of IP-PSTN services are subject to the baseline obligation to pay access charges when they send traffic to the PSTN. The enhanced service provider (ESP) exemption does not, as some claim, change this result. The ESP exemption applies only when an information service provider uses the PSTN to connect with its own customers. It has never been extended to a situation where an information service provider uses the PSTN to send traffic to non-customer third parties to whom the information service provider is not providing an information service not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their *own* subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge "jurisdictionalized" compensation rates for such traffic (notwithstanding SBC's position that it is interstate in nature) in

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						accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC's existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.
		ITR				
Should Transit Services be included in a Section 251/252 interconnection agreement?	44	4.21-4.3	***4.2.1"Transit Traffic" is local and intraLATA toll traffic originated by or terminates to CLEC's End Users from another Local Exchange Carrier, CLEC or wireless carrier's End User that transit a SBC-13STATE Tandem. Transit Traffic does not terminate to SBC-13STATE's End Users.*** ***4.2.2 When transit traffic through the SBC-13STATE Tandem from CLEC to another Local Exchange Carrier, CLEC or wireless carrier requires 72 or more trunks, CLEC shall establish a direct***	Transit traffic is traffic from a TelCove end user that "transits" over the SBC network to reach an end user located on a third party's network (e.g., an independent LEC or a CMRS provider). Transit Traffic also includes the reverse scenario; traffic flowing from an end user of a third party's network to a TelCove end user that transits over the SBC network. SBC provided transit service under the prior interconnection agreement between the Parties. It is now unilaterally seeking a dramatic change in longstanding industry	Intentionally Omitted.	No. It is SBC's position that this issue is not arbitrable because neither Section 251 (b) or (c), nor any other provision of the Act requires ILECs to provide transit service. Pursuant to the Fifth Circuit's recent decision in *Coserv LLC v. Southwestern Bell Telephone Co.*, 350 F.3d 482 (5th Cir. 2003)(*"Coserv"*), non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items. Accordingly, the Commission must decline CLEC's attempt to have the Commission arbitrate this issue.

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			trunk group between itself and the other Local Exchange Carrier, CLEC or wireless carrier. CLEC shall route Transit Traffic via SBC-13STATE's Tandem switches, and not at or through any SBC-13STATE End Offices. Once a direct trunk group is established, CLEC agrees to cease routing transit traffic through the SBC-13STATE Tandem to the third party terminating carrier. This trunk group will be serviced in accordance with the Trunk Design Blocking Criteria in Section 7.0. ***4.2.3 SBC CONNECTICUT will make its Connecticut Transit Traffic Service available to CLEC for the purpose of completing CLEC Transit Traffic calls as defined in Section 4.2.1 at the rates and upon the terms and conditions set forth in Appendix Pricing and the applicable CT Access Service Tariff respectively. In doing so, SBC CONNECTICUT will compensate the terminating carrier for applicable local compensation or intraLATA access compensation.*** ***4.3 While the Parties agree that it is the responsibility of the CLEC to enter into arrangements with each third party carrier (ILECs, IXCs, Wireless Carriers or other CLECs) to deliver or receive transit traffic, SBC-13STATE acknowledges that***	practice and network design. SBC seeks to "deregulate" and remove transit traffic from this successor interconnection agreement between the parties. SBC has asserted that it is not obligated to provide transit service pursuant to Section 251 and Section 252. TelCove disagrees. The provision of transit traffic is interconnection governed, at a minimum by Section 251(a)(1) of the Telecommunications Act of 1996 and therefore should be included in this Agreement. . Section 251 (a)(1) requires all telecommunications carriers "to interconnection directly or indirectly with the facilities and equipment of other telecommunications carriers." See 47 U.S. C. A. § 251 (1)(a). Transit traffic fits within this type of indirect interconnection identified and intended to be addressed by Section 251. Absent transit service under this Agreement (or TelCove's agreement to enter into a new stand alone contract at dramatically higher than cost allegedly "market based" rates for transit) a TelCove customer's call to the third party carrier's customer would not be completed unless TelCove had a direct trunk arrangement with the wireless or other third		

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			such arrangements may not currently be in place and an interim arrangement will facilitate traffic completion on a temporary basis. Accordingly, until the earlier of (I) the date on which either Party has entered into an arrangement with third-party carrier to exchange transit traffic to CLEC and (II) the date transit traffic volumes exchanged by the CLEC and third-party carrier exceed the volumes specified in Section 4.2.2, SBC-13STATE will provide CLEC with transit service. CLEC agrees to use reasonable efforts to enter into agreements with third-party carriers as soon as possible after the Effective Date. ***4.3.1 Once the CLEC is notified that that there is more than three DS1's worth of traffic to any 3rd party, then the CLEC will invoke an interconnection arrangement with the 3rd party of concern within 60 calendar days.*** ***4.3.2 If CLEC does not establish direct trunk groups as described above, SBC-13STATE reserves the right to cease delivery of such traffic.*** ***4.3.3 All traffic must identify the originating party. For Transit Traffic the originating Party will be responsible for providing the originating billing***	party carrier. Since the Telecommunications Act of 1996 Section 251(c)(1) requirements do not apply to non incumbents, TelCove does not have any leverage to require third-party carriers to negotiate interconnection agreements for the exchange of transit traffic in a timely manner. In many cases no real "market" exists for transit facilities leaving TelCove with no economical option except to pay SBC for this service. Without transit service TelCove would be impaired to provide local exchange services in a similar manner as SBC. Such a result would be directly contrary to the concept of interoperability and interconnection envisioned by the 1996 Act. Other states, including Connecticut, have found that SBC had an obligation to provide transit service. See Docket No. 02-01-23 Petition of Cox Connecticut Telcom, L.L.C. for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates Decision (January 15, 2003)(appeal pending in federal district court). Since the time this Commission approved the prior interconnection agreement with virtually identical transit service provisions to those SBC now seeks to strike, neither the		

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			information to the terminating Party, if technically feasible. If the originating Party does not provide the originating billing information to the terminating Party, then SBC-13STATE must provide the originating billing information to the terminating party. Any costs incurred by the terminating Party in obtaining the records, and costs incurred in manual billing, will be billed back to the originating Party. If neither the originating party nor SBC-13STATE is able to provide the originating billing information to the terminating party, the terminating party is under no obligation to terminate the Transit Traffic.	FCC nor the courts have relieved SBC of its obligation to indirectly interconnect under either Section 251 (a)(1) or 251(b)(5). As the United States Court of Appeals for the District of Columbia Circuit recently found, the FCC has not definitively addressed whether or not transit traffic is an Unbundled Network Element but has deferred consideration of that issue until it completes its rulemaking on intercarrier compensation. Thus, the DC Circuit has indicated that the transit issue remains open and that the FCC has yet to act. See United States Telecom Association v. Federal Communications Commission, 359 F.3d 554 (March 2, 2004)("USTA II"). The fact remains that only SBC has a ubiquitous network that interconnects with virtually all other carriers operating in its footprint. At low traffic volumes, it would be prohibitively expensive for carriers to directly trunk to each other, instead of utilizing their shared interconnection with SBC. It is far more efficient for SBC to be required to provide a transit facility (while recovering its costs) than to require all carriers to construct trunks among themselves for limited		

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				volumes of traffic. The continued availability of transit service in this interconnection agreement is consistent with prior Commission rulings, federal and state law, efficient network design and public policy.		
Should SBC be deemed the originating carrier for traffic that it passes where the CPN has been stripped or that otherwise cannot be identified?	45	5.48	5.4.8 CLEC shall provide all SS7 signaling information including, without limitation, charge number and originating line information ("OLI"). For terminating FGD, **SBC-13STATE** will pass all SS7 signaling information including, without limitation, CPN if it receives CPN from FGD carriers. ***SBC-13STATE will be deemed the originating carrier for all traffic that it passes which has been stripped or that otherwise does not allow the CLEC to identify the access customer.*** All privacy indicators will be honored. Where available, network signaling information such as transit network selection ("TNS") parameter, carrier identification codes ("CIC") (CCS platform) and CIC/OZZ information (non-SS7 environment) will be provided by CLEC wherever such information is needed for call routing or billing. The Parties will follow all OBF adopted standards pertaining to TNS and CIC/OZZ codes	The terminating party should be compensated for all traffic terminated on its network. To the extent one Party delivers third-party traffic to the other Party, the Party delivering the traffic must either identify the originating party for the traffic or take responsibility for paying the required terminating compensation to the terminating party. The party delivering the traffic to the terminating party should know the identity of the Party which originated the traffic or which delivered the traffic to the intermediary transit carrier. Absent proper billing records from the intermediary transit carrier, the terminating carrier has no means of identifying the originating party. TelCove is not disputing the requirement to enter into the proper interconnection or transport and termination agreements with the originating party. The only issue in dispute is the responsibility to identify the originating party and compensate the terminating party when the originating party has not been adequately identified.	5.4.8 CLEC shall provide all SS7 signaling information including, without limitation, charge number and originating line information ("OLI"). For terminating FGD, **SBC-13STATE** will pass all SS7 signaling information including, without limitation, CPN if it receives CPN from FGD carriers. . All privacy indicators will be honored. Where available, network signaling information such as transit network selection ("TNS") parameter, carrier identification codes ("CIC") (CCS platform) and CIC/OZZ information (non-SS7 environment) will be provided by CLEC wherever such information is needed for call routing or billing. The Parties will follow all OBF adopted standards pertaining to TNS and CIC/OZZ codes	No. SBC should not be required to pay for other carrier's traffic. It is the originating carrier's responsibility to clearly identify the source of the traffic. SBC is willing to work cooperatively with TelCove through various methods to try and identify the originator of the calls without CPN.

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TelCove Issue: 1) Should the Agreement contain terms allowing for the exchange of VOIP traffic? 2) Should VOIP traffic be classified by the geographic location of the Calling and Called parties? 3) How should the Parties compensate each other for the termination of VOIP traffic? SBC Issue: What is the proper routing treatment and compensation for Switched Access Traffic including without limitation any PSTN to PSTN traffic and VOIP to PSTN Traffic?	46	12.1-12.2	**12.1** For purposes of this Agreement only, Switched Access Traffic shall ***exclude Voice Over Internet Protocol ("VOIP") traffic.*** Switched Access Traffic shall **mean all *non-VOIP circuit switched*** traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission). ***With the exception of VOIP traffic as set forth above,*** all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks: (i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider,	1) Yes. The Agreement should allow IP-enabled service traffic to be exchanged. However, all IP-enabled traffic is not "information services" or "switched access" traffic and thus does not have to be terminated over feature group access trunks nor be charged based on switched access tariffs. In addition, "information services" traffic is not automatically defined as "switched access" traffic or charged switched access charges. 2) No. Geographic location does not apply to IP-enabled traffic. TelCove agrees that "switched access" traffic should be terminated over feature group access trunks except as noted in subsections (i) to (iv) and should be subject to tariff access charges. However, all IP enabled traffic is not "switched access" traffic. Regarding subsection (iii), TelCove believes that either party could receive traffic from an IXC for which the number has been ported and the IXC has failed to perform the necessary LNP query. Switched access charges apply to traffic which terminates in a different local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission	**12.1** For purposes of this Agreement only, Switched Access **Traffic shall mean all traffic** that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) **including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the contrary in this Agreement,** all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories	SBC's position is that, unless and until the FCC rules otherwise, all Switched Access Traffic, as defined below, must be terminated over feature group access trunks (B or D)(except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN).

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider; (iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or (iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party. Notwithstanding anything to the contrary in this Agreement, each Party reserves it rights, remedies, and arguments relating to the application of switched access charges for ***VOIP traffic*** and other traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004) ***and in the FCC's Order***	or other appropriate regulatory authority than the calling area where the traffic originated regardless of the technology chosen by the originating or terminating parties to transmit the traffic. However, the choice of either party to use IP technology to originate, transmit and/or terminate a call does not necessarily make the traffic switched access traffic or "information services" traffic as SBC suggests. This Commission should not classify all IP-PSTN traffic as "switched access" traffic. Only traffic which terminates in a different local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission or other appropriate regulatory authority than the calling area where the traffic originated should be designated as "switched access" traffic. TelCove's proposed definition is consistent with the FCC's conclusions in the recent Vonage decision. See WC Docket No. 03-211 In re: Vonage Holdings Corporation Petition and Order of the Minnesota Public Utilities Commission Memorandum Opinion and Order (released November 12, 2004). In Vonage, the FCC determined that VOIP traffic could not be separated into a local or long distance component. The FCC also stated that VOIP service or IP enabled	of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks: (i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider, (ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider; (iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or (iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party. Notwithstanding anything to the contrary in this Agreement, each Party reserves it	SBC's position that all Switched Access Traffic is subject to switched access charges is supported by long-standing FCC precedent and rules, under which any provider that uses ILEC local exchange switching facilities, including an information service provider, is subject to the baseline obligation to pay access charges, unless specifically exempted. With respect to PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic"), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to access charges under the FCC's rules. *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephone Services are Exempt from Access Charges*, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (*Access Charge Avoidance Order*). Consistent with the FCC's *Access Charge Avoidance Order*, this Commission should find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over feature group access trunks.

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			issued in the matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (Released November 12, 2004). 12.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 12.1 above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 12.) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a	services are not geography based. SBC's attempts to restrict IP enabled traffic to a particular geographic region must fail. 3) Ultimately, TelCove acknowledges that the FCC must speak further on the proper treatment of VOIP calls for compensation and access charge purposes. SBC's language would prejudge the outcome of the FCC's future determinations on this issue. SBC seeks to unilaterally impose charges and dedicated access trunk requirements on IP-enabled traffic. Such prejudgment should not be incorporated into this agreement. Instead, TelCove's technology neutral definition of 251 (b)(5) traffic should be adopted.	rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004). 12.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section **12.1 (iv)** above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from	With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and regulations, providers of IP-PSTN services are subject to the baseline obligation to pay access charges when they send traffic to the PSTN. The enhanced service provider (ESP) exemption does not, as some claim, change this result. The ESP exemption applies only when an information service provider uses the PSTN to connect with its own customers. It has never been extended to a situation where an information service provider uses the PSTN to send traffic to non-customer third parties to whom the information service provider is not providing an information service .not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their *own* subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to

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			complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.		the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section **12.1(iv)** above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.	charge "jurisdictionalized" compensation rates for such traffic (notwithstanding SBC's position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC's existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.
		NIM				
1) If SBC utilizes the physical collocations facilities that CLEC obtains from SBC, must SBC compensate CLEC on a pro rata basis?	47	3.1.1	3.1.1 When CLEC provides their own facilities or uses the facilities of a third party to a **SBC-13STATE** Tandem or End Office and wishes to place their own transport terminating equipment at that location, CLEC may Interconnect using the provisions of Physical Collocation as set forth in Appendix Physical Collocation. ***If capacity exists and SBC-13STATE desires to use the physical collocation facilities***	TelCove's proposed language makes it clear that SBC cannot utilize for its own traffic any facilities (on the SBC side of the POI) that TelCove has obtained from SBC. One example cited is physical collocation facilities but the concept applies to any facilities. TelCove has paid SBC a fee for these facilities. If SBC elects to utilize those same facilities it must pay its pro-rata share based on its use. For example, TelCove	3.1.1 When CLEC provides their own facilities or uses the facilities of a third party to a **SBC-13STATE** Tandem or End Office and wishes to place their own transport terminating equipment at that location, CLEC may Interconnect using the provisions of Physical Collocation as set forth in Appendix Physical Collocation.	No. TelCove must interconnect at SBC's network and must provide facilities to SBC-13STATE's network for interconnection.. Thus, SBC would not use the CLEC's collocation. In addition, SBC owns the DSX panel, and the POI is at the point on the DSX where the CLEC connects their wire (coax or twisted pair). Since SBC owns the DSX panel, and hence everything on that side of the POI it would be inappropriate for

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			purchased by CLEC, SBC-13STATE must compensate CLEC for its prorate use of these facilities at the same rates that SBC-13STATE assesses to CLEC.	pays SBC for certain APOT/CFAs related to collocation. To the extent SBC utilizes this APOT/CFA, it must bear part of the cost paid by TelCove for the APOT/CFA. Whether SBC plans to use the facilities purchased by TelCove or not, should SBC decide to use such facilities, SBC should be required to compensate TelCove accordingly.		the CLEC to charge us to connect our own wires to our own equipment.
If SBC utilizes the virtual collocations facilities that CLEC obtains from SBC, must SBC compensate CLEC on a pro rata basis?	48	3.2.1	3.2.1 When CLEC provides their own facilities or uses the facilities of a third party to a **SBC-13STATE** Tandem or End Office and wishes for **SBC-13STATE** to place transport terminating equipment at that location on the CLEC's behalf, they may Interconnect using the provisions of Virtual Collocation as set forth in Appendix Virtual Collocation. Virtual Collocation allows CLEC to choose the equipment vendor and does not require that CLEC be Physically Collocated. ***If capacity exists and SBC-13 STATE desires to use the virtual collocation facilities purchased by CLEC, SBC-13STATE must compensate CLEC for its prorate use of these facilities at the same rates that SBC-13STATE assesses to CLEC***	TelCove's proposed language makes it clear that SBC cannot utilize for its own traffic any facilities (on the SBC side of the POI) that TelCove has obtained from SBC. TelCove has paid SBC a fee for these facilities. If SBC elects to utilize those same facilities it must pay its pro-rata share based on its use. For example, TelCove pays SBC for certain APOT/CFAs related to collocation. To the extent SBC utilizes these APOT/CFA, it must bear part of the cost paid by TelCove for the APOT/CFA. Whether SBC plans to use the facilities purchased by CLEC or not, should SBC decide to use such facilities, SBC should be required to compensate CLEC accordingly.	3.2.1 When CLEC provides their own facilities or uses the facilities of a third party to a **SBC-13STATE** Tandem or End Office and wishes for **SBC-13STATE** to place transport terminating equipment at that location on the CLEC's behalf, they may Interconnect using the provisions of Virtual Collocation as set forth in Appendix Virtual Collocation. Virtual Collocation allows CLEC to choose the equipment vendor and does not require that CLEC be Physically Collocated.	No. TelCove must interconnect at SBC's network and must provide facilities to SBC's network for interconnection.. Thus, SBC would not use the CLEC's collocation. In addition, SBC owns the DSX panel, and the POI is at the point on the DSX where the CLEC connects their wire (coax or twisted pair). Since SBC owns the DSX panel, and hence everything on that side of the POI it would be inappropriate for the CLEC to charge us to connect our own wires to our own equipment.
Should the agreement contain language allowing for CLEC leasing of SBC facilities for the purpose o interconnection?	49	3.3.1 5 – 5..3	3.3.1 ***Where facilities are available, CLEC may lease facilities from SBC-13STATE as defined in Section 5 of this Appendix.*** CLEC may lease facilities from a third party. 5. ***LEASING OF FACILITIES***	Should SBC be required to lease available facilities, TelCove's proposed language would require SBC to lease the facilities at interconnection rather than retail rates.	3.3.1 **CLEC may lease facilities from a third party or may purchase facilities from SBC-13STATE at the applicable access tariff rates.** 5. Intentionally Left Blank 5.1 Intentionally Left Blank	No. It is SBC's position that this issue is not arbitrable because neither Section 251(b) or (c), nor any other provision of the Act requires ILECs to provide interconnection facilities on the CLEC's side of the POI . Pursuant to the Fifth Circuit's recent decision in *Coserv LLC v. Southwestern Bell*

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			5.1 Should SBC-13STATE wish to voluntarily provide CLEC with Leased ILEC Facilities for the purpose of interconnection, the Parties agree that this voluntary offering is not required under FTA 96 nor under FCC UNE Remand Order 99-238, November 5, 1999, and is made with all rights reserved. The Parties further agree that any such voluntary offering is not subject to TELRIC cost methodologies, and instead will be market priced on an individual case basis. Should SBC-13STATE voluntarily offer Leased Facilities under this section, it (I) will advise the CLEC in writing in advance of the applicable charges for Leased Facilities, and (II) will process the request only if CLEC accepts such charges. ***5.1.1 Leased facilities in SBC MIDWEST REGION 5-STATE and SBC CONNECTICUT are obtained from the applicable Access Tariffs*** ***5.2 Upon CLEC's request, the CLEC will provide a written leased facility request that will specify the A- and Z-ends (CLLI codes, where known), equipment and multiplexing required and provide quantities requested. Requests for leasing of facilities for the purposes***		5.2 Intentionally Left Blank 5.3 Intentionally Left Blank	*Telephone Co.*, 350 F.3d 482 (5th Cir. 2003)*("Coserv")*, non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items. Accordingly, the Commission must decline CLEC's attempt to have the Commission arbitrate this issue. Furthermore, SBC should not be required to provide dedicated transport at UNE based rates for facilities outside of SBC's network from CLEC's switch or Point of Presence to the POI. The FCC's decision in the TRO, re-defining UDT, states that UDT only runs between SBC switches or wire centers, and entrance facilities no longer exist.

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			of Interconnection and any future augmentations are subject to facility availability at the time of the request. Applicable rates, terms and conditions will be determined at the time of the request ***5.3 Requests by CLEC for leased facilities where facilities, equipment, or riser cable do not exist will be considered and SBC-13STATE may agree to provide facilities under a Bona Fide Request (BFR).***			
Should a SONET Standard Interface be required or should a "single linear point-to-point linear chain SONET system" be utilized?	50	3.4.2	When the Parties agree to interconnect their networks pursuant to the Fiber Meet Point, ***a SONET Standard Interface must be utilized.*** Only Interconnection trunking shall be provisioned over this jointly provided facility.	TelCove agrees that it will provide a standard SONET (Synchronous Optical Network) interface. SONET is defined in Newton's Telecom Dictionary as a "optical interface standard that allows interworking of transmission products form multiple vendors (i.e. mid-span meets). To the best of TelCove's knowledge, "single linear point to point linear chain SONET system" is neither a standard industry term or further defined in the Agreement. The "single linear point to point linear chain SONET system" language proposed by SBC is unclear, vague and should be rejected.	When the Parties agree to interconnect their networks pursuant to the Fiber Meet Point, **a single linear point-to-point linear chain SONET system must be utilized.** Only Interconnection trunking shall be provisioned over this jointly provided facility.	The parties agree in section 3.4.3 of Appendix NIM that neither Party will be allowed to access the Data Communications Channel" (DCC) SONET Ring architectures depend upon this DCC. Therefore, it is not technically possible with the agreed language for all "SONET Standard Interface[s]" to work. Linear Point-to-Point chains are technically feasible and can be engineered by the CLEC to have the survivability SONET Rings usually provide.
		OUT OF				

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		EXCHANGE TRAFFIC				
What is the proper definition for "Out of Exchange Traffic"?	51	1.4	1.4 For purposes of this Appendix only, **"Out of Exchange Traffic"** is defined as ***Telecommunications traffic, IP-enabled Services Traffic,*** ISP-Bound Traffic***, transit traffic, or intraLATA traffic to or from a non-SBC ILEC exchange area,*** ISP-Bound Traffic, intraLATA traffic:	When TelCove is operating as an OE-LEC in the same local calling area as SBC, the compensation mechanism for traffic exchanged between the parties should follow the same process as though TelCove was operating in an SBC wire center located within the same SBC local calling area. Section 251(b)(5) reciprocal compensation (refer to Issue 37) applies to traffic which originates and terminates in the same local calling area as identified in the ILEC's (i.e., SBC's) tariffs or the same mandatory local calling area established by the State Commission or other appropriate regulatory authority regardless of the technology chosen by the originating or terminating parties to transmit the traffic. The choice of either party to use IP technology to originate, transmit and/or terminate a call should have no bearing on the statutory requirement under Section 251(b)(5) of the 1996 Telecommunications Act for the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The responsibility of the originating party to compensate the terminating party exists irregardless of the technology chosen to originate, transmit or terminate the traffic.	1.4 For purposes of this Appendix only, **"Out of Exchange Traffic"** is defined as, ISP-Bound Traffic**, Section 251(b)(5) Traffic,** ISP-Bound Traffic, **FX,** intraLATA traffic **and/or InterLATA Section 251(b)(5) Traffic exchanged pursuant to an FCC approved or court ordered InterLATA boundary waiver that:**	See Issue 37 under Intercarrier Compensation above.

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
Where should TelCove route out of exchange traffic when SBC is not the serving tandem?	52	4.5	4.5 If **SBC-13STATE** is not the serving tandem as reflected in the LERG, ***the OE-LEC may route Local Calls, ISP-Bound Traffic IP enabled services traffic and/or IntraLATA traffic destined for End Offices that subtend an SBC-13STATE tandem directly to the serving SBC-13STATE tandem or End Office, as described by Bellcore Notes On The Networks, upon mutual agreement of the Parties. Such tandem routing of other traffic types may be considered and effected upon mutual agreement of the Parties.***	TelCove's proposal is designed to provide the flexibility for efficient use of existing network facilities whenever possible. TelCove has the requirement to establish at least one POI in a LATA, and the POI must be on SBC's network. If efficient network management allows TelCove to route calls to an existing or a newly established POI at a SBC tandem in the same LATA as the OELEC, TelCove will comply with its interconnection requirements. TelCove's proposal provides the flexibility to use existing POIs and/or interconnection trunks and facilities in situations where SBC has a tandem located in the same LATA as the OELEC. If SBC does not have a tandem located in the same LATA as the OELEC, TelCove's proposal would allow routing of calls directly to the SBC end office.	4.5 If **SBC-13STATE** is not the serving tandem as reflected in the LERG, **the OE-LEC shall route Out of Exchange Traffic directly to the serving SBC-13STATE End Office.**	Under 251(c)(2) TelCove may only interconnect with SBC-13STATE on SBC's network. 47 CFR Section 51.305 provides that an incumbent shall provide interconnection with the incumbent LEC's network at any technically feasible point *within* the incumbent LEC's network. Other ILEC's switches are not within SBC's network and therefore are not valid points of interconnection.
Should transit traffic be addressed in a 251/252 ICA?	53	6.0 – 6.3	***6. TRANSIT TRAFFIC COMPENSATION*** ***6.1 The terms and conditions for Transit Traffic exchanged between the Parties shall be as set forth in the underlying Agreement.*** ***6.2 In SBC SOUTHWEST REGION 5-STATE the transiting rate is outlined in Appendix Pricing as Transiting-Out of Region.*** ***6.3 In the SBC MIDWEST REGION 5-***	Same as Issue 39.	6.0 Intentionally Left Blank	No. It is SBC's position that this issue is not arbitrable because neither Section 251(b) or (c), nor any other provision of the Act requires ILECs to provide interconnection facilities on the CLEC's side of the POI . Pursuant to the Fifth Circuit's recent decision in *Coserv LLC v. Southwestern Bell Telephone Co.*, 350 F.3d 482 (5th Cir. 2003)*("Coserv")*, non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items. Accordingly, the Commission must decline

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			STATE, SBC CALIFORNIA and SBC NEVADA the transiting rate is outlined in Appendix Pricing as Transiting Service.			CLEC's attempt to have the Commission arbitrate this issue.
		STRUCTURE ACCESS				
Which party should bear the costs to move CLECs facilities if SBC abandons or transfers a structure within one year of the initial attachment?	54	3.3	3.3 No Effect on **SBC-13STATE**'s Right to Abandon, Convey or Transfer Structure Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall in any way affect **SBC-13STATE**'s right to abandon, convey, or transfer to any other person or entity **SBC-13STATE**'s interest in any of **SBC-13STATE**'s Structure. **SBC-13STATE** shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred. ***If SBC-13STATE abandons a Structure or the transferee is not able to continue to provide access to the Attaching Party, SBC-13STATE shall pay the reasonable costs of relocation for the Attaching Party's attached facilities, so long as such abandonment occurs within one year of the initial attachment of the facility***	SBC should bear the cost of relocation if it abandons, conveys or transfers structure within one year of the attachment. It is commercially reasonable for TelCove to expect to be able to rely on SBC to know whether or not it is going to abandon, convey or transfer structure in the immediate future. This is particularly true where TelCove will have made a significant capital investment based on the existence and availability of the structure. If TelCove was informed that SBC intended to abandon the structure in the next year, TelCove would decide whether its proposed attachment or conduit pull is economic. TelCove agrees that beyond 12 months it bears the risk that its attachments may need to be relocated.	3.3 No Effect on **SBC-13STATE**'s Right to Abandon, Convey or Transfer Structure Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall in any way affect **SBC-13STATE**'s right to abandon, convey, or transfer to any other person or entity **SBC-13STATE**'s interest in any of **SBC-13STATE**'s Structure. **SBC-13STATE** shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.	No. It is not SBC's responsibility to cover the costs for all CLECs when it chooses to abandon, convey or transfer a structure. TelCove makes a business decision at the time it requests such access not to place its own poles or conduits (and thus to avoid the significant cost of doing its own placement). It is unreasonable for TelCove to attempt to shift even more cost to SBC, such that SBC is forced to cover even more of TelCove's cost of doing business. Even if SBC welcomed the added responsibility and cost of negotiating TelCove's attachment arrangement with a transferee, it would not be good policy (or business) for TelCove to rely on a third party to make such arrangements. TelCove would be best served, once it receives 60 days notice from SBC, to negotiate its own attachment arrangements with a transferee, or make alternative arrangements in the event the attachment is no longer feasible.

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
1) Can a CLEC utilize its umbrella policies to meet the insurance requirements? 2) If not, are the insurance levels sought by SBC reasonable?	55	10.1.4	***Minimum insurance coverage and limits may be provided for by either basis or umbrella policies or any combination thereof, such policies to be provided to the other Party upon request***	1) Yes. TelCove believes that for clarity and consistency all insurance provisions should be set forth in the General Terms and Conditions and not in the Appendix. 2) No. As set forth in more detail in the response to the insurance section of the General Terms and Conditions, SBC's proposed primary coverage limits are excessive and unreasonable. They represent an unjustified and significant increase over existing coverage levels. However, TelCove agreed to provide SBC the protection it seeks by offering to meet the insurance coverage limits via the use of TelCove's umbrella coverage. SBC rejected TelCove's proposal. The Commission should either require SBC to reduce its requested insurance levels or require SBC to accept TelCove's use of umbrella coverage.	Deleted.	This issue is addressed in SBC's position statement to Issue 4 above.
Should evidence of CLEC investment grade debt or credit rating only apply in the case of self insurance in lieu of insurance coverage?	56	10.3.3	10.3.3 General liability: ***If Attaching Party utilizes a program of self-insurance in lieu of insurance coverage, then*** Attaching Party must provide evidence acceptable to **SBC-13STATE** 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.	Yes. TelCove's language limits the requirement for TelCove to maintain a specified credit rating to only those situations where TelCove seeks to use self-insurance. It is only in that specific circumstance that SBC has a valid interest in TelCove maintaining a certain credit rating, as it goes to TelCove's ability to cover insurance type damages. Outside of the self-insurance context, SBC should not be allowed to dictate or mandate	10.3.3 General liability: Attaching Party must provide evidence acceptable to **SBC-13STATE** 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.	This issue is addressed in SBC's position statement to Issue 4 above.

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
				the credit status that TelCove must maintain.		
TelCove Issue: 1) Can SBC force the removal of CLEC facilities if CLEC continues to pay for the facilities but has temporarily ceased to make active use of the poles, ducts, conduits and rights of way? 2) If removal, despite the exercise of due diligence by the CLEC, takes longer than 60 days and the CLEC is willing to continue paying its pole attachment fees, should SBC have the right to insist on 60 days for removal? SBC Issue: 1) Is SBC obligated to allow CLEC to continue to maintain occupancy permits for SBC structures when CLEC has ceased to provided telecommunications service in the state or has ceased to make active use of the structure?	57	12.1 28.3	12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Appendix and all occupancy permits subject to this Appendix shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to **SBC-13STATE**'s poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State). 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from **SBC-13STATE**'s poles, ducts, conduits, or rights-of-way with 60 days after termination of the occupancy permit. ***Notwithstanding the foregoing, if removal of Attaching Party's facilities will in the exercise of due diligence take longer than sixty (60) days, Attaching Party shall be granted a reasonable period of time to remove its facilities.***	1) No. TelCove should be allowed to maintain its facilities so long as it continues to pay for the facilities and is licensed or in the process of reinstating or renewing its license. There is no economic incentive for TelCove to continue to pay for use of the facilities if it has no near term use for those facilities. SBC should not be able to demand the removal of the facilities should TelCove temporarily cease using the facilities. 2) In certain circumstances, it may take TelCove longer than sixty days to remove its facilities, despite diligent effort. While TelCove would make every effort to have its notice of termination date fall within sixty days of the time to remove equipment, that may not be possible given existing customer requirements. In those instances, TelCove simply seeks adequate time to remove its facilities and is willing to continue to pay SBC for its occupancy during the time required.	12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority. This Appendix and all occupancy permits subject to this Appendix shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to **SBC-13STATE**'s poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide **or ceases to provide** telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State) **, or ceases to make active use of SBC-13STATE's poles, ducts, conduits, and rights-of-way.** 28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from **SBC-13STATE**'s poles, ducts, conduits, or rights-of-way with 60 days after termination of the occupancy permit.	1. No. This process provides a non-discriminatory approach for all users of these facilities which are not restricted to competitive carriers such as TelCove. The industry has supported this process. SBC needs some consistency to apply in a non-discriminatory manner As long as TelCove maintains an occupancy permit and is not using or cannot use the SBC structure, TelCove is keeping the structure for possible use by SBC or other CLECs who may need the use of the Structure and instead forcing them to commit to possible substantial construction costs unnecessarily. 2. Nothing in 28.3 restricts TelCove from waiting until it has removed its facilities or is nearly completed with removing its facilities to notify SBC to terminate the occupancy permit. TelCove has not provided any rationale why 60 days is insufficient, only that it is not long enough for TelCove. Certainly, TelCove could work within this timeframe and contact SBC if they foresee a problem based upon a project specific situation. This is a more preferable solution than blankly extending the time before the need arises. Also, TelCove is in control of many of these terminations and TelCove can split the terminations up into workable sections to meet the 60 days or TelCove could begin its work earlier that its notification to SBC that it

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2) If TelCove is terminating an occupancy permit, should TelCove manage its termination request such that it will have removed its facilities within 60 days from its notice to SBC to terminate its occupancy permit?						wishes to terminate the occupancy permit.
Is it appropriate to have an SBC employee present at any time TelCove performs work within the conduit system? If appropriate, then which party should bear the cost?	58	16.3.2	16.3.2 ***At SBC-13STATE's option and sole expense an*** authorized employee or representative of **SBC-13STATE** may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within **SBC-13STATE**'s conduit system.	No. As a certified telecommunications provider in the state, with a long history and a highly trained and qualified workforce, as well as established relationships with venders (many certified and used by SBC), TelCove believes that there should be no requirement that an SBC employee be present any time TelCove enters or performs work in the conduit system. TelCove is not opposed to allowing SBC to be present if it so desires. Since that is SBC's choice, it should bear the cost. This cost allocation is particularly valid should SBC be allowed to charge TelCove for a post construction inspection.	16.3.2 **An** authorized employee or representative of **SBC-13STATE** may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within **SBC-13STATE**'s conduit system. **Attaching Party shall reimburse SBC-13STATE for costs associated with the presence of SBC-13STATE's authorized employee or representative.**	Yes. TelCove ignores the fact that they have the ability as a competitive telecommunications carrier to place their own facilities and not rely solely on SBC to provide these services. The conduit system that SBC maintains is not limited to SBC's equipment alone, but rather equipment owned by CLECs, utility companies, cable companies and others. When TelCove goes into a conduit system, it places in jeopardy everyone else's equipment if the safety and maintenance procedures are not followed. TelCove is asking SBC to assume the liability and costs for their actions. This is not a fair practice. Because of critical security, service reliability, and network integrity concerns, SBC needs to be able to be present to verify all work is performed correctly when TelCove or its authorized representative enters the conduit system. This is standard practice in many SBC states. TelCove, the cost causer, should

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
						bear the cost of any review required. Not only is this standard practice in SBC states, but this is standard practice in other utility interconnections also in these states (e.g., electric). To address TelCove's language at 16.3.2 does not require that SBC must have an employee present during all of the installation and construction, nor does this language at 26.1 which addresses the post-construction inspections. This language at 16.3.2, only covers when CLEC enters the conduit system and additional work may be performed before and/or after entry into the conduit system, therefore, a post construction inspection would still be necessary. SBC does not believe TelCove wants SBC to be present at all of CLECs construction sites for the entire construction tome (and at TelCove's expense), therefore, SBC has proposed that a post-construction inspection is most expeditious for both parties.
What SBC charges, if any, should apply for access to maps records and additional information?	59	17.1	17.1 **SBC-13STATE** will, upon request and ***at no charge***, provide Attaching Party **access to** redacted maps, records and additional information relating to the location, capacity and utilization of **SBC-13STATE's** Structure. . Upon request ***and, at Attaching Party's expense,*** **SBC-13STATE** will ***provide copies and*** meet with the Attaching Party to clarify matters	SBC should not be allowed to charge TelCove for access to necessary maps, records and additional information required to plan TelCove's access to structure. SBC is already charging TelCove a considerable fee for use of the structure. Access to information necessary to implement the use of the structure should not be an additional cost.	17.1 **SBC-13STATE** will, upon request and **at the expense of the Attaching Party**, provide Attaching Party **access to and** copies of redacted maps, records and additional information relating to the location, capacity and utilization of **SBC-13STATE's** Structure. . Upon request, **SBC-13STATE** will meet with the Attaching Party to clarify matters relating to maps, records or additional information.	SBC believes it is appropriate to charge the time and material rate established in the state specific Pricing Schedule for TelCove requests to review these records. TelCove is unreasonably asking SBC personnel to stop their duties to pull information together for their use without reasonable compensation.

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			relating to maps, records or additional information. **SBC-13STATE** does not warrant the accuracy or completeness of information on any maps or records.	However, TelCove is willing to pay for any copies and for any meetings it requests with SBC employees to clarify the maps, records or additional information.	**SBC-13STATE** does not warrant the accuracy or completeness of information on any maps or records	
Is it appropriate to limit the Attaching Party's obligation to reimburse pre-existing attaching parties "to the extent required by applicable law"?	60	20.7	20.7 If Attaching Party utilizes space or capacity on any **SBC-13STATE** Structure created at **SBC-13STATE**'s expense after February of 1996, the Attaching Party will reimburse ***pre-existing*** attaching parties on a pro-rata basis, ***to the extent required by applicable law,*** for the Attaching Party's share, if any, of **SBC-13STATE**'s capacity creation costs	Yes. TelCove should only be required to reimburse pre-existing attachment users to the extent required by applicable law. SBC should not be allowed to, by contract, force TelCove to involuntarily assume more responsibility for the cost of the pole than the Commission or other governmental body has determined is appropriate.	20.7 If Attaching Party utilizes space or capacity on any **SBC-13STATE** Structure created at **SBC-13STATE**'s expense after February of 1996, the Attaching Party will reimburse Attaching parties on a pro-rata basis, for the Attaching Party's share, if any, of **SBC-13STATE**'s capacity creation costs	The limitation on any reimbursement was established in the 1996 Telecommunications Act, when the Legislature took a "snapshot" in time. This placed a static position for reimbursements that any ILEC could recoup for additional space costs and that snapshot is accurately reflected in SBC's language proposal..
1) Should a penalty be assigned for unauthorized entry into SBC's conduit system? 2) If so, is $1,000 for the first unauthorized entry, doubling with each additional violation an appropriate penalty?	61	22.1	22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within **SBC-13STATE**'s poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.	1) Yes, on a prospective basis only. TelCove is willing to pay a reasonable penalty for unauthorized entry. SBC seeks to impose on TelCove open-ended liability going back numerous years. Without a full pole/conduit plant audit (which even SBC does not appear to have done) TelCove cannot accept such an open-ended retroactive liability. Should SBC identify any unauthorized prior attachments, TelCove will immediately seek the required occupancy permit. 2) While TelCove respects SBC's right to discourage unauthorized entry, the proposed penalty amount and the rapid escalation are extreme and therefore unreasonable. They appear designed more to interfere with a	22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within **SBC-13STATE**'s poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit. **SBC-13STATE and CLEC further agree that CLEC shall pay to SBC-13STATE a penalty of $1,000.00 for the first unauthorized entry into the conduit system, doubling with each additional**	Yes. Because of critical security, service reliability, and network integrity concerns. SBC needs to be made aware of and authorize any entry into its conduit system. Indeed in 16.3.2, TelCove agrees that SBC has the right to have an employee present when TelCove enters SBC's conduit system. If TelCove is not obtaining authorization for its entry into SBC's conduit system, TelCove is already in breach of contract, depriving SBC of its right and potentially exposing SBC and any other CLEC leasing conduit space in SBC's conduit system to security and safety risks. SBC is not looking to drive expense into TelCove's, any CLEC's or SBC's use of the conduit system, but is instead looking for a

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				competitor's financial ability to compete than to prevent the identified harm.	**violation**	way to discourage undesirable behavior (behavior that TelCove's position statement suggests it is currently engaging in). The penalty is not intended to enrich SBC; SBC would prefer to never have an unauthorized entry and thus never collect the penalty. The point is to stop unauthorized entry and the amount needs to be steep enough for each unauthorized entry to curb the behavior. SBC has the right to assign a penalty in order to drive responsible behavior for accessing SBC's conduit system. SBC's proposal of a $1,000 penalty for a first offense is a reasonably small enough amount to send a proper message, with the knowledge that the penalty grows with each unauthorized offense.
Joint Issue: 1) Should Attaching Party pay for SBC to conduct a post construction inspection? TelCove Issue: 2) If so, should the charge apply where an Attaching Party paid for an SBC representative to be present during installation?	62	26.1	26.1 Post-Construction Inspections. **SBC-13STATE** will, ***at its option and sole expense***, conduct a post-construction inspection of the Attaching Party's attachment of facilities to **SBC-13STATE**'s Structures for the purpose of determining the conformance of the attachments to the occupancy permit. **SBC-13STATE** will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany **SBC-13STATE** on the post-construction inspection	1) TelCove utilizes the same type of highly trained workforce and contractors as does SBC. TelCove does not believe that a post construction inspection is required. To the extent that SBC believes that such an inspection is necessary, it should bear the cost. 2) If TelCove paid for the cost of an SBC representative to be present during installation, TelCove should not be asked to pay again. Any SBC "inspection" required should have been carried out in real time by	26.1 Post-Construction Inspections. **SBC-13STATE** will, **at the attaching party's** expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to **SBC-13STATE**'s Structures for the purpose of determining the conformance of the attachments to the occupancy permit. **SBC-13STATE** will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany **SBC-13STATE** on the post-construction inspection	A post construction inspection is the only way SBC can ensure network reliability. The most important rationale for post construction inspections is public safety. The only way to ensure that all necessary standards are met is to do an inspection after construction of the attachments is completed. It is also important for the attachments to conform to the occupancy permit to ensure that facilities of other attaching parties are not compromised and that SBC Structure capacity is used as efficiently as possible, which

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				the SBC representative during installation.		benefits all attaching parties. As explained in issue5, this agreement does not have language requiring SBC to be present during all of TelCove's installations nor has SBC agreed to be present during the entire course of CLECs installations and therefore TelCove issue 63(2) is inappropriate. A post-construction inspection takes place at the end of the construction phase, not in the middle.
TelCove Issue: Can SBC remove Attaching Party's untagged facilities without any opportunity to cure? SBC Issue: Can SBC remove Attaching Party's untagged facilities which are not the subject of a valid occupancy permit or otherwise lawfully present?	63	27.2	27.2 Removal of Untagged Facilities. **SBC-13STATE** may, ***upon written notice to the Attaching Party and after providing the Attaching Party the opportunity to correct any deficiencies under the terms of this Appendix*, without notice to any *other* person or entity** remove from **SBC-13STATE**'s poles or any part of **SBC-13STATE**'s conduit system the Attaching Party's ***untagged*** facilities, if **SBC-13STATE** determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on **SBC-13STATE**'s poles or in **SBC-13STATE**'s conduit system	No. TelCove would not deliberately utilize untagged facilities. To the extent that SBC is aware that the untagged facilities are TelCove's it should be required to provide TelCove with an opportunity to properly tag its facilities prior to removing them from the pole or conduit. The removal of the facilities would very likely be customer service affecting. As a result, SBC should be required to take every step necessary to see that TelCove's end-user customers do not lose service.	27.2 Removal of Untagged Facilities. **SBC-13STATE** may **without notice to any person or entity** remove from **SBC-13STATE**'s poles or any part of **SBC-13STATE**'s conduit system the Attaching Party's facilities, if **SBC-13STATE** determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on **SBC-13STATE**'s poles or in **SBC-13STATE**'s conduit system	Yes. TelCove misses the whole point of this section. Untagged facilities are those facilities where the owner is unknown so how can SBC provide written notice. This language is meant to provide assurance for all CLECs of the actions SBC will take when facilities are not marked properly and are not lawfully attached with a current occupancy permit..
1) Can SBC charge a penalty for unauthorized pole attachments and conduit occupancy?	64	27.6	27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from **SBC-13STATE**'s poles, conduit system or rights of way or until a new or amended	1) Similar to pole attachments, TelCove does not oppose SBC charging a reasonable penalty on a prospective basis. However, SBC apparently seeks to impose open ended liability going back numerous	27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from **SBC-13STATE**'s poles, conduit system or rights of way or until a new or amended	1.. Yes. This agreement requires TelCove to apply for and obtain a occupancy permit and those permits are granted on a first come basis. It is unfair to SBC (as attachments and occupancies without a

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2) If so, is SBC's proposed $500.00 per unauthorized pole attachment and $500.00 per unauthorized conduit foot. penalty reasonable? 3) If allowed, should such penalties apply prospectively only?			occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable **SBC-13STATE** licensing requirements as outlined SBC's CLEC On-line website – https://clec.sbc.com/clec. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. Provided, however, that in no event shall the period for back billed fees and charges exceed two (2) years. Attaching Party shall rearrange or remove its unauthorized facilities at **SBC-13STATE**'s request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to **SBC-13STATE** or another Other User, and shall pay **SBC-13STATE** for all costs incurred by **SBC-13STATE** in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities	years. Without a full pole/conduit plant audit (which even SBC does not appear to have done) TelCove cannot accept by this agreement an unknown and, at least potentially, large retroactive liability. Should SBC identify any unauthorized prior attachments or conduit occupancy, TelCove will immediately seek the required occupancy permit. 2) While TelCove respects SBC's right to discourage future unauthorized entry, SBC's proposed penalty amount and rapid escalation are unreasonable. They appear designed more to interfere with a competitor's financial ability to compete than to prevent the identified harm.	occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable **SBC-13STATE** licensing requirements as outlined SBC's CLEC On-line website – https://clec.sbc.com/clec. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. Provided, however, that in no event shall the period for back billed fees and charges exceed two (2) years. **The Attaching Party shall be liable for an unauthorized attachment or occupancy fee in the amount of $500.00 per unauthorized pole attachment and $500.00 per unauthorized conduit foot.** Attaching Party shall rearrange or remove its unauthorized facilities at **SBC-13STATE**'s request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to **SBC-13STATE** or another Other User, and shall pay **SBC-13STATE** for all costs incurred by **SBC-13STATE** in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities	permit deprive SBC of its property and associated fees) and unfair to the rest of the industry (as it deprives them of the space when they may have appropriately applied for a permit, but the space was unlawfully grabbed by TelCove. If TelCove is attaching without a permit, they are in breach of this contract. Rather than insist that TelCove remove its facilities, SBC has instead proposed that TelCove pay a fine for it's unlawful behavior which is much less customer affecting and refrain from such behavior going forward. 2.. The amount proposed by SBC has already been approved in some states which are subject to this agreement and as such has been forum reasonable. 3.. TelCove should not have been engaging in such behavior in the past and should immediately apply for licenses where it has failed to do so in the past. The fact that a penalty was not spelled out in a previous contract should not prevent TelCove from being punished for its past transgressions and SBC suggests TelCove immediately cure any defects it has currently.
If penalties are paid for unauthorized attachment or	65	27.8	27.8 No Ratification of Unpermited Attachments or Unauthorized Use of **SBC-**	SBC seeks yet another method to recover for past unauthorized entry. To the extent	27.8 No Ratification of Unpermited Attachments or Unauthorized Use of **SBC-**	Like Issues 61 and 64 above, SBC does have the right to levy penalties for unpermitted

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occupancy, should TelCove remain responsible for potential liability for trespass and other illegal or wrongful conduct?			**13STATE**'s Facilities. No act or failure to act by **SBC-13STATE** with regard to any unauthorized attachment or occupancy or unauthorized use of **SBC-13STATE**'s Structure shall be deemed to constitute a ratification by **SBC-13STATE** of the unauthorized attachment or occupancy or use.	that SBC is allowed to collect penalties, it should not be able to then seek damages in trespass or under other alternative legal theories. Rather than deter future unauthorized attachments, SBC's proposal amounts to an attempt to cause as much financial damage to its competitors as possible. SBC should be required to choose its remedy. It can either seek penalties, or it can attempt to pursue its other legal remedies. It should not be allowed to do both.	**13STATE**'s Facilities. No act or failure to act by **SBC-13STATE** with regard to any unauthorized attachment or occupancy or unauthorized use of **SBC-13STATE**'s Structure shall be deemed to constitute a ratification by **SBC-13STATE** of the unauthorized attachment or occupancy or use. , **nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities**	attachments or unauthorized use of SBC's facilities. The penalties are a necessary first step in preventing the behavior what could become major liability and negligence actions should the behavior not be corrected first.. TelCove is requesting that if it commits a wrongful act (an unauthorized attachment or unauthorized entry into the SBC conduit system) and is caught and has to pay a fine, it wants that fine to cover any additional liability that may be a result of its unlawful deed (e.g., a flooded Central office due to failing to close a zero manhole properly, or a aerial cable snapping because it was attached incorrectly and killing someone or placed wrong an damaging power facilities). The difference here in the fine and the liability is like the difference for the fine for speeding or drunk driving and the liability -- you are going to get a ticket, however if you hit someone or something, you may still have damages etc. on the liability and negligence side and the fact that you paid the ticket does not exonerate or cancel those claims. SBC cannot assume those liability responsibilities for TelCove, that is a cost of doing business that TelCove must always assume.

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DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND TELCOVE
PART 1 – GENERAL TERMS & CONDITIONS, COLLOCATION, INTERCARRIER COMPENSATON, INTERCONNECTION TRUNKING REQUIREMENTS (ITR), NETWORK INTERCONNECTION METHODS (NIM), OUT OF EXCHANGE TRAFFIC, AND STRUCTURE ACCESS – Issues 1 - 67

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
1) Is a bond requirement permissible? 2) If a bond requirement is permissible, can SBC require a Bond to ensure performance of TelCove's general obligations under the Appendix or is that bonding requirement properly limited to construction?	66	30.1	**30.1 Bond May Be Required. SBC-13STATE may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations *relating to construction* arising out of or in connection with this Appendix.** **30.1.1 If *requested,* a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to SBC-13STATE adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SBC-13STATE 60 days written notice.**	1) Yes, but any bonding must be limited to a legitimate construction purpose. TelCove is not opposed to reasonable construction bonds. SBC should not, however, be allowed to require that TelCove post a bond to cover its general payment and other obligations under this Agreement. The language as proposed by SBC represents yet another attempt by SBC to force an alternative deposit or assurance of payment requirement. TelCove opposes any such requirement. Please refer to TelCove's more detailed response to assurance of payments in Section 7 of the General Terms and Conditions.	**30.1 Bond May Be Required. SBC-13STATE may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Appendix.** **30.1.1 If a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to SBC-13STATE adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing SBC-13STATE 60 days written notice.**	Yes, a bond requirement is permissible, but as the heading for this section states, "it may be required". The bond requirement is a general one to cover any obligation under the Structure Access appendix be it a failure to pay for make ready work, or the cost of rearranging their equipment in the event of a safety violation, or failure to pay the semi annual fees. The bond requirements for when bonds are required should not be limited.
Is a cross reference to Section 30.1 and "any security" appropriate?	67	30.2	Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men and other persons or entities performing work or providing materials in connection with Attaching Party's performance under	To the extent that the language of this section cross-references the commercially unreasonable general bonding requirement in Section 30.1 TelCove opines and requests that it be struck.	Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, material men and other persons or entities performing work or providing materials in connection with Attaching Party's performance under	See SBC's position in Issue 66 above.

Key: **Bold represents language proposed by SBC and opposed by TelCove.**
Bold Italic language represents language proposed by TelCove and opposed by SBC.

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			this Appendix. In the event any lien, claim or demand is made on **SBC-13STATE** by any such employee, contractor, subcontractor, mechanic, material man, or other person or entity providing such materials or performing such work, SBC-13STATE may require, **in addition to any security provided under Section 30.1 of this Appendix,** that Attaching Party execute payment or performance bonds, **or** provide such other security, as **SBC-13STATE** may deem reasonable or necessary to protect **SBC-13STATE** from any such lien, claim or demand.		this Appendix. In the event any lien, claim or demand is made on **SBC-13STATE** by any such employee, contractor, subcontractor, mechanic, material man, or other person or entity providing such materials or performing such work, SBC-13STATE may require, **in addition to any security provided under Section 30.1 of this Appendix,** that Attaching Party execute payment or performance bonds, **or** provide such other security, as **SBC-13STATE** may deem reasonable or necessary to protect **SBC-13STATE** from any such lien, claim or demand.	

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