

JOINT DISPUTED POINTS LIST

Part 2

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MASTER LIST OF ISSUES BETWEEN SBC AND TELCOVE
PART 2 – UNBUNDLED NETWORK ELEMENTS – Issues 68 – 89

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
<p>Joint Issue: Should the Parties expressly acknowledge that the ICA does not address Section 271 of the Telecommunications Act and that the parties expressly reserve their rights with respect to such elements?</p> <p>SBC Issue: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be 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</p>	68	1.1; 1.1.1	<p>1.1 This Appendix Lawful UNEs sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNEs for the provision by CLEC of a Telecommunications Service pursuant to Section 251(c)(3) of the Federal Telecommunications Act of 1996. <i>The Parties expressly acknowledge that this Appendix does not address network elements, if any, that may be required to be unbundled under Section 271 of the Telecommunications Act and both parties expressly reserve their rights to address all Section 271 network unbundling related issues in a separate agreement or via appropriate regulatory or judicial proceedings.</i> For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.</p> <p>1.1.1 <i>TelCove's markup that follows is relevant only to the extent that a Commission should ultimately deem the issue arbitratable and reject TelCove's position relating to the FCC's interim rule applicability.</i></p>	<p>The Parties disagree on much of the UNE Appendix. Considerable legal and regulatory uncertainty hindered progress. The parties have differing interpretations of the FCC's interim rules, the proper interpretation of the United States Court of Appeals for the District of Columbia Circuit's decision in <u>United States Telecom Association v. FCC</u>, 359 F.3d 554 (DC Circuit 2004)(“USTA II”), and the timing and likely content of the FCC's permanent UNE rules. It is likely that the FCC's permanent rules will dramatically alter the Parties positions and the text of any UNE Appendix.</p> <p>Accordingly, TelCove has proposed continuing to operate and access UNEs under the FCC's “stand still” embodied in the FCC's Interim Rules until the agency can issue its final UNE rules. SBC has rejected this position. TelCove has not voluntarily waived and has expressly reserved its rights to UNEs available to it pursuant to the interim rules. See <u>CoServe LLC v. Southwestern Bell Telephone Co.</u> 350 F.3d 482 (5th Cir. 2003).</p> <p>The dispute resolution or change of law provisions included as part of this ICA could be utilized to determine which UNEs are available after the FCC's stand still has expired.</p>	<p>1.1 This Appendix Lawful UNEs sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNEs for the provision by CLEC of a Telecommunications Service pursuant to Section 251(c)(3) of the Federal Telecommunications Act of 1996. For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.</p> <p>1.1.1 Intentionally Left Blank</p>	<p>Section 271 Reference</p> <p>SBC-13STATE's proposed language for Section 1.1 should be accepted because it provides that SBC-13STATE is obligated to provide UNEs under this Section 251 agreement, but only to the extent required by Section 251(c) (3) of the Act as determined by lawful and effective FCC rules and associated FCC and judicial orders. TelCove's language, which references Section 271, is not properly included in a Section 251 agreement. ILEC unbundling obligations stem from Section 251(c)(3) (and the Section 251(d)(2) necessary and impair standards), not any other provision of the Act. Accordingly, SBC's proposed language refers only to Section 251(c)(3) and not Section 271.</p> <p>Interim Order Applicability</p> <p>TelCove seeks to reserve its rights to obtain unbundled elements pursuant to the FCC's Interim Order. <i>USTA II</i> vacated the FCC rules requiring unbundling of local circuit switching, dedicated transport, high-capacity loops, and other former UNEs. Paragraph 23 of the FCC's <i>Interim Order</i> states that even though the FCC is requiring the continued unbundling of local circuit switching, dedicated transport, and high-capacity loops for a limited period, CLECs cannot perpetuate the vacated unbundling requirements in a new interconnection agreement. However., if the Commission believes that it must take account of the <i>Interim Order's</i> short, interim “standstill” period in some fashion, and permit TelCove to obtain</p>

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Section 251(c)(3) of the Act?			<p><i>FCC Interim Order (Released August. 20 2004) maintains the status quo of all UNEs that existed and were available at a set price as of June 15, 2004. TelCove expressly reserves its rights and does not wish to waive its rights to obtain unbundled network elements that are currently available to it under the FCC's interim rules. TelCove is willing to consider any alternative language proposal or mechanism that would fully reflect the high likelihood of permanent UNE rules from the FCC by year end.</i></p>	<p>To the extent that the Commission should ultimately deem the issue arbitratable and reject TelCove's position relating to the applicability of the FCC's interim rule, TelCove has proposed modifications to the Appendix in this DPL.</p> <p>TelCove remains willing to consider a Commission stand still via incorporation of language that would fully reflect the high likelihood of permanent UNE rules from the FCC by year end.</p> <p>TelCove believes that its proposed language closely tracks the TRO, FCC interim rules, and USTA II requirements. To the extent that the jointly proposed ICA language contains too much "redlining" to be useful, TelCove would be happy to submit to the Commission a cleaned up version of the Appendix.</p> <p>TelCove has a general concern regarding SBC's use of the word "Lawful" to describe UNEs. To avoid unnecessary confusion in the document, TelCove has not stricken each and every instance where SBC utilizes the term to refer to UNEs that are currently available at TELRIC pricing. In the end, regardless of the label of "Lawful," a UNE is either available to a CLEC under applicable</p>		<p>UNEs under the Interim Order for any time period that overlaps the short period set forth in the <i>Interim Order</i>, SBC is willing to offer language to properly accomplish that goal. Specifically, SBC proposes to add a rider to the new interconnection agreement, which would create a limited exception to the agreement by allowing TelCove the full benefits of the <i>Interim Order</i> until those benefits expire. Pursuant to the <i>Interim Order</i>, those benefits expire the earlier of the date the FCC promulgates permanent unbundling rules or March 13, 2005 (six months from publication of the <i>Interim Order</i>.)</p> <p>Subject to the exceptions created by the rider, the actual new interconnection agreement would reflect SBC's proposed language, thus properly removing any requirement to unbundle declassified UNEs and reflecting other key limitations on unbundling from the <i>TRO</i> and the Supreme Court's <i>Verizon</i> decision. The terms of the new agreement would, of course, be subject to amendment based on any future FCC unbundling rules.</p> <p>This proposal is fair to TelCove, giving it everything to which it arguably could be entitled under the <i>Interim Order</i>, and fair to SBC, by not requiring it to include in the new interconnection agreement any unbundling requirements that have been vacated</p>

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				<p>law and the ICA or it is not.</p> <p>TelCove seeks to require SBC to provide UNEs only to the extent that SBC is required by law to offer a particular UNE. The Act and subsequent FCC decisions, as well as case law, will determine what constitutes an available UNE. TelCove rejects SBC's attempt to import into the contract specific tests or conditions drawn from particular court decisions that may or may not reflect the current state of the law.</p> <p>SBC also has numerous obligations pursuant to Section 271. SBC opposes inclusion of any reference to Section 271 in the ICA and claims that it is only obligated to include Section 251 and 252 obligations in the Parties' ICA.</p> <p>SBC's Section 271 obligations remain applicable and they raise questions including the availability and use of "271 Elements," those parts of SBC's network that SBC must make available to TelCove and other competitive carriers pursuant to Section 271. Other issues include but are not limited to price and commingling of 271 Elements and UNEs.</p> <p>SBC had proposed and TelCove believed that the Parties had agreed to</p>		

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				<p>address Section 271 issues separately and then incorporate the results into this Section 251/252 agreement as the issues were resolved. TelCove had agreed that each party would fully and expressly reserve any and all rights to address Section 271 elements and their availability and relationship to UNEs.</p> <p>SBC appears to have modified its position on how to address 271 issues in the latest draft of the UNE Appendix. SBC now seeks to affirmatively exclude Section 271 Elements and its obligations under Section 271.</p> <p>If the Commission does not accept TelCove's proposed language reserving the Section 271 UNE issues, TelCove reserves its right to propose additional modifications to the Appendix to account for TelCove's Section 271 position. TelCove also expressly reserves its rights to reinsert into the UNE Appendix numerous references relating to the definition, availability, and use of Section 271 Elements.</p> <p>For example, TelCove would take the position that the ICA must include the terms and conditions under which TelCove will obtain access to all UNEs, not just those required to be unbundled under Section 251. SBC is</p>		

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				<p>also required to provide certain network elements such as switching, loops and transport—under Section 271 of the Act. The contract language TelCove would propose would define a UNE to mean a network element required to be unbundled under either Section 251 or Section 271. The Act explicitly requires SBC to offer Section 271 network elements pursuant to interconnection agreements approved by state commissions in accordance with Section 252 of the Act. That means that Section 271 network elements are to be offered under these agreements.</p> <p>SBC appears to interpret the Act differently, concluding that only its Section 251 obligations must be part of the agreement and that any network element that is not a Section 251 UNE is not to be addressed in the ICA. The negative impact on TelCove is increased by SBC's contention that USTA II eliminated every UNE except for basic unbundled loops (2-wire and 4-wire copper loops and digital loops for DS0). SBC has therefore proposed to delete terms and conditions for almost every UNE contained in the Parties' existing ICA. For example, SBC's position that Unbundled Local Switching ("ULS") is no longer a Section 251 UNE results in SBC's proposal to delete not only all terms</p>		

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

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				<p>and conditions for access to this UNE, but also all terms and conditions for access to switch features including access to the LIDB and other databases, all provisions relating to ordering and provisioning of every service utilizing ULS, and all pricing terms specifying what local compensation arrangement will apply to any service utilizing ULS. Similarly, SBC asserts that it is neither required to provide EELs under this agreement nor to perform conversions from special access to EELs. SBC's contract language erroneously treats the USTA II decision as if it has mandated a permanent removal of most federal unbundling obligations. SBC also overstates the impact of the temporary absence of FCC UNE rules and ignores the fact that the FCC is currently engaged in an expedited process of developing a revised set of permanent UNE rules.</p> <p>This fundamental dispute as to what UNEs will be addressed in the agreement permeates the UNE Appendix.</p>		
What is the appropriate transition and notification process for UNEs SBC is no longer obligated	69	2.1 2.2 2.2.1 2.2.2.1 2.2.2.2 2.2.2.3 2.2.3	2.1 <u>Lawful UNEs and Declassified UNEs.</u> This Agreement sets forth the terms and conditions pursuant to which <u>SBC-13STATE</u> will provide CLEC with access to unbundled network	2.2.1 TelCove's language clarifies what "declassification" really means. A UNE is declassified when it is no longer required to be provided on an unbundled basis as a result of a change in the law or the FCC's application of the law.	2.1 <u>Lawful UNEs and Declassification UNEs.</u> This Agreement sets forth the terms and conditions pursuant to which <u>SBC-13STATE</u> will provide CLEC with access to unbundled network elements under Section 251(c)(3)	TelCove's definition of "Declassified" is not correct. The first half of TelCove's definition appropriately states that "Declassification" occurs when SBC is no longer required or is not required to provide a network element on an unbundled basis pursuant to Section 251(c)(3). But the second half of the statement goes on to say, "... as a result of the

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to provide?		2.2.4 2.3 2.4 2.5 2.6 2.6.1 2.6.2 2.15.2	<p>elements under Section 251(c)(3) of the Act in SBC-13STATE's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC-13STATE shall be obligated to provide UNEs only to the extent required by Sections 251(c)(3) of the Act, as determined by lawful FCC and State Commission rules and associated lawful effective FCC, State Commission and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Sections 251(c)(3) of the Act and any applicable state laws, as determined by lawful effective FCC and State Commission rules and associated lawful and effective FCC, State Commission and judicial orders.</p> <p>2.2 As a result of the FCC's Triennial Review Order, (Triennial Review Order released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"),</p>	<p>2.2.1 TelCove proposes to include state law and state commission rules for consideration of whether a UNE is available and more importantly, at what price.</p> <p>2.2.1 SBC's one-sided citations to USTA I, the TRO and other cases do not belong in the contract. The state of the law in this area and the cases speak for themselves. Moreover, for every decision cited by SBC, another important case is necessarily omitted.</p>	<p>of the Act in SBC-13STATE's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC-13STATE shall be obligated to provide UNEs only to the extent required by Sections 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC, and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Sections 251(c)(3) of the Act as determined by lawful and effective FCC rules and associated lawful and effective FCC, and judicial orders. UNEs that SBC-13STATE is required to provide pursuant to Sections 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC, and judicial orders shall be referred to in this Agreement as "Lawful UNEs."</p> <p>2.2 Intentionally Left Blank</p> <p>2.2.1 A Lawful UNE, including a network element referred to as under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Sections 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC, and</p>	<p>issuance of a finding by the FCC that requesting telecommunications carriers are not impaired without [access to the UNE].” The second half of TelCove's definition turns unbundling law on its head. . Nothing in the 1996 Act, or in the FCC's rules or orders, says that ILECs must provide everything as a unbundled network element until the FCC says otherwise. To the contrary, the Supreme Court has made clear that there is no “underlying duty to make all network elements available.” <i>AT&T Corp. v. Iowa Utils. Bd.</i>, 525 U.S. 366, 391 (1999). Rather, Congress directed the FCC to determine, by legislative rule, which network elements must be unbundled. <i>See id.</i> at 391-92; <i>USTA II</i>, 359 F.3d at 561; 47 U.S.C. § 251(d)(2). TelCove's definition is backwards because it presumes that unbundling is required until the FCC decides it is not.</p> <p>SBC-13STATE's definition of “Declassification” is correct and complete under applicable law, as follows:</p> <p>1) What does “declassification” mean? (Sec. 2.1.1)</p> <p>SBC's language sets forth a definition of declassification that depends upon judicial and regulatory action for the declassification of items that have previously been required to be unbundled under Section 251. The decision of whether something has been declassified rests with those bodies, not with SBC or CLEC, but once the declassification event has occurred, the parties can conform their agreement and business relationship using the Lawful UNE transition process.</p> <p>2) What are the items that have already been</p>

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			<p><i>certain types of local loops, shared and dedicated transport, and local switching were removed from the FCC's list of Section 251 Unbundled Network Elements ("Declassified UNE's") because the FCC concluded that CLECs were not impaired by the unavailability of these network elements as UNEs under Section 251 of the Act. In addition, the FCC determined that CLECs would have access to certain elements as UNEs pursuant to Section 251 only under certain circumstances, and further directed the state commissions to determine whether CLECs are impaired without access to local switching as a UNE under Section 251 in particular geographic market areas and impaired without access to certain loops and transport routes as UNEs under Section 251. The D.C. Circuit in USTA II (359 F.3d 554 March 2, 2004) vacated and remanded certain aspects of the TRO and also ruled that the FCC's reliance on the state commissions to make findings of impairment was an unAvailable delegation of the</i></p>		<p>judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."</p> <p>2.2.2 Without limitation a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified, upon or by (a) the issuance of the mandate in <i>United States Telecom Association v. FCC</i>, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) operation of the <i>Triennial Review Order</i> released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, <i>United States Telecom Association v. FCC</i>, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"); or (e b) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that <u>SBC-13STATE</u> is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Sections 251(c)(3) of the Act. By way of example only, a network element can cease to be a Lawful UNE or be Declassified on an</p>	<p>declassified and are no longer required to be provided? (Sec. 2.1.2.1)</p> <ul style="list-style-type: none"> ■ entrance facilities ■ dedicated transport, at any level, including but not limited to DSO, OCn, DS1, DS3 or Dark Fiber Transport ■ Local Switching (as defined in Section 5.6 of this Attachment; ■ OCn Loops, DS or DS Loops, or Dark Fiber Loops; ■ The Feeder portion of the Loop; ■ Line Sharing; ■ any Call-Related Database, other than the 911 or E911 databases, that is not provisioned in connection with CLEC's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching.; ■ SS7 Signaling that is not provisioned in connection with CLEC's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching) ■ Packet switching, including routers and DSLAMs; ■ the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over Hybrid Loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; ■ Fiber-to-the Home Loops and Fiber-to-the-Curb Loops (as defined in 47 CFR §

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			<p><i>FCC's authority. The D.C. Circuit's decision has been appealed. At the time the parties are negotiating this Agreement, the D.C. Circuit's mandate has issued, but the FCC has yet to issue permanent UNE rules under Section 251 in response to the D.C. Circuit's vacatur and remand. As a result, the Parties have determined it is appropriate to establish a process in this Agreement to address Declassified UNEs, the network elements that continue to be available to CLECs ("Available UNEs") and to address the potential for one or more Declassified UNEs to be reinstated as Available UNEs under Section 251 as a result of a court, FCC or ___state Commission decision.</i></p> <p>2.2.1 In this Appendix the terms "Declassified" or "Declassification" mean the situation where SBC13STATE is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act as a result of the issuance of a finding by the FCC that requesting telecommunications</p>		<p>element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.</p> <p>2.2.2.1 By way of example only, and without limitation, network elements that are Declassified include at least the following: (i) any unbundled dedicated transport or dark fiber facility that is no longer encompassed within the definition of unbundled dedicated transport or dark fiber set forth in the FCC's lawful and applicable rules (including, but not limited to entrance facilities and Dedicated Transport at any level other than DS1 and DS3); (ii) DS1 Dedicated Transport, DS3 Dedicated Transport, DS1 Loop, DS3 Loop, or Dark Fiber Transport on a route(s) or in an area as to which it is determined that requesting Telecommunications Carriers are not impaired without access to such elements; (iii) Local Switching for Enterprise Customers (as defined in Section 11 of this Appendix); (iv) Local Switching for Mass Market Customers (as defined in Section 11 of this Appendix) in any market in which it is determined that requesting Telecommunications Carriers are not impaired without access to such element; (v) to the extent it constitutes a Lawful UNE, Local Switching subject to the FCC's four-line carve-out rule as described in <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, CC Docket No. 96-98, 15 FCC Rcd</p>	<p>51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that SBC-13STATE has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop in which case SBC-13STATE will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis.</p> <p>This list of items, which includes items that have been declassified by USTA I, TRO and USTA II, is designed to provide clarity around what the parties are agreeing to in their interconnection agreement. They are items to which the FCC or judiciary have already spoken and should be noncontroversial. The inclusion of this list will likely lessen the likelihood of post-execution disputes between the parties.</p> <p>3) What will happen if additional items are declassified? (Section s 2.4 and 2.5)</p> <p>State Law Unbundling</p> <p>TelCove's language is also improper because it seeks to require the provision of UNEs when State Commission rules (i.e. state law) requires it. Any invocation by TelCove of state law to impose additional unbundling requirements is contrary to, and preempted by, federal law on at least two grounds: (i) blanket unbundling without regard to the federal impairment standard has been repudiated by the courts and by the FCC as contrary to national policy, and (ii) USTA II</p>

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			<p><i>carriers are not impaired without access to a particular network element on an unbundled basis. A Lawful network element, including a</i> under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Sections 251(c)(3) of the Act, as determined by FCC and State Commission rules and associated effective FCC, State Commission and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified." <i>The Parties agree that the FCC in its Triennial Review Order determined that interconnection facilities that ILECs are required to provide for Section 251(c)(2) interconnection are not appropriately included in the definition of dedicated transport and thus will not be subject to Declassification.</i></p> <p>2.2.2 CLEC is not entitled to obtain (or continue to have) access to any network element on an unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or services (e.g., combined or commingled), once such network element has been Declassified by the FCC and no longer is an Available UNE. 2004) ("USTA II"); or (b)</p>		<p>3822-31 (1999), per 47 CFR § 51.319(d)(3)(ii); (vi) OCn Loops and OCn Dedicated Transport; (vii) the Feeder portion of the Loop; (viii) Line Sharing; (ix) an EEL that does not meet the Mandatory Eligibility Criteria set forth in Section 2.19 of this Appendix; (x) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with CLEC's use of <u>SBC-13STATE's</u> Lawful ULS for Mass Market Customers (as defined in Section 11 of this Appendix); (xi) SS7 signaling that is not provisioned in connection with CLEC's use of <u>SBC-13STATE's</u> Lawful UNE Local Switching for Mass Market Customers (as defined in Section 11 of this Appendix), to the extent Local Switching for Mass Market Customers constitutes a Lawful UNE; (xii) Packet switching, including routers and DSLAMs; (xiii) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over Hybrid Loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; (xiv) Fiber-to-the-Home Loops (as defined in 47 CFR 51.319(a)(3)) ("FTTH Loops"), except to the extent that <u>SBC-13STATE</u> has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which</p>	<p>emphatically holds that the FCC, not the states, is to assess impairment and achieve the balance required by the 1996 Act.</p> <p>The FCC's TRO expressly admonished that states may <i>not</i> "impose any unbundling framework they deem proper under state law, <i>without regard to the federal regime.</i>" TRO ¶ 192 (emphasis added). The FCC went on to say that it would be "unlikely" that any "decision pursuant to state law" that "require[d] the unbundling of a network element for which the Commission has . . . found no impairment" ever could be consistent with federal law. <i>Id</i> The FCC concluded that states are "precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order." TRO ¶¶ 191-94 & nn. 610-16.</p> <p>Therefore, SBC-13STATE's proposed language should be adopted since it properly limits SBC-13STATE's obligation to provide UNE to those required under the Act as determined by the FCC rules and associated lawful and effective FCC and judicial orders.</p> <p>"Re-Availability" of UNEs</p> <p>TelCove proposes that if and when the FCC (or state commission) make a Declassified UNE available again ("Re-Available"), then SBC will be required to fill orders for such UNEs and permit conversions involving such UNEs within 30 days from the effective date of the order. TelCove's language ignores the fact that, while Declassification of an element requires only a simple deletion of an element from the</p>

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			<p>2.2.2.1 <i>Reserved for future use.</i></p> <p>2.2.2.2 <i>Reserved for future use.</i></p> <p>2.2.2.3 <i>Reserved for future use.</i></p> <p>2.2.3 <i>Reserved for future use.</i></p> <p>2.2.4 <i>Reserved for future use.</i></p> <p>2.3 Nothing contained in the Agreement shall be deemed to constitute consent by SBC-13STATE that any item identified in this Agreement as a UNE or, network element Lawful UNE is a network element or UNE under Sections 251(c)(3) of the Act, as determined by effective FCC or State Commission rules and associated effective FCC, State Commission and judicial orders, that SBC-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs, or commingled with other network elements, UNEs (Lawful) or other services or facilities. <i>Nothing contained herein or excluded from this Appendix shall be deemed to constitute consent by CLEC that any item not identified in this Appendix as an Available UNE or network element is not a network element or Available UNE under Section 251(c)(3) of the Act, as determined by effective FCC or State Commission rules and associated effective FCC, State</i></p>	<p>2.2.2.1 TelCove struck SBC's language because TelCove believes that certain UNEs identified by SBC as no longer available are, in fact, legally required to be provided by SBC. For example, SBC has stricken DS-1 loops and certain Enhanced Extended Loops ("EELs") which must still be offered. TelCove also struck SBC's proposed language because it is static and only defines what SBC believes to be true as of today. Once the permanent UNE rules have been released, SBC's "by way of example only" list will inevitably be inaccurate and misleading.</p> <p>TelCove also opposes on general grounds the inclusion of any contract language that begins with "by way of example only, and without limitation."</p> <p>2.2.4 TelCove opposes use of "By way of example only" since by definition it is not necessary to be included in the contract and only illustrates SBC's position and not TelCove's position.</p> <p>2.3 SBC seeks to exclude state commission decisions and rules. TelCove believes that state commission rules and proceedings are relevant to the determination of UNEs and the ICA should reflect this fact.</p> <p>2.3 The ICA should have a mutual clause that TelCove has not waived</p>	<p>case SBC-13STATE will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis; or (xv) any element or class of elements as to which a general determination is made that requesting Telecommunications Carriers are not impaired without access to such element or class of elements; and</p> <p>2.2.2.2 Pursuant to <i>USTA II</i>, at least the following elements are <i>also</i> Declassified, as of the issuance of the USTA II mandate: (i) DS1 and DS3 dedicated transport; (ii) DS1 and DS3 loops; (iii) dedicated transport and loop dark fiber; and (iv) Local Switching for Mass Market Customers as defined in Section 11.2. <i>Reserved for future use.</i></p> <p>2.2.2.3 At a minimum, at least the items set forth in this Section 2.1 shall not constitute Lawful UNEs under this Agreement.</p> <p>2.2.3 It is the Parties' intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful" the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1.</p> <p>2.2.4 By way of example only, if terms and conditions of this Agreement state that</p>	<p>agreement, the re-classification of an element will likely require changes to the provider's systems and possibly some product development and associated pricing work. The implementation of those items requires more than 30 days, and will also likely require the amendment of the agreement to include necessary terms and conditions for the provision of the item(s). Accordingly, although SBC is willing to consider a provision for the "Re-Availability" of a Declassified UNE, it would need to be clear that the "Re-Availability" occurred only as a result of lawful (FCC) rules pursuant to Section 251, and only for elements that had been previously provided under substantially similar terms and conditions. Further, there should be at least a 60-day period from notice by the party desiring the element for the parties to work out terms and conditions and any necessary amendment to the agreement – before the item would be available for ordering and provisioning. For other items that might be classified as UNEs by the FCC under Section 251(c)(3) in the future, the parties' change in law provision is adequate.</p> <p>TelCove's language also imposes a requirement on SBC to do conversions of wholesale services to UNEs, including Section 271 elements within the definition of "wholesale services." This language should not be included in the agreement. First, the rules related to conversions have been vacated by the USTA II decision, so are no longer in effect (47 C.F.R. § 51.316 and 51.318(a)).</p> <p>SBC-13STATE's Lawful UNE declassification transition language states that SBC will provide reasonable notice (in this case, 30 days) that an item or category of items otherwise included in the</p>

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p><i>Commission and judicial orders, that SBC-13STATE is not required to provide to CLEC alone, or in combination with other network elements or UNEs, or commingled with other network elements UNEs, or other services or facilities.</i></p> <p>2.4 The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p> <p>2.5 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.</p> <p>2.6 <u>Transition Procedure.</u> <i>In accordance with, but only to the extent required by the Act, including</i></p>	<p>any future determinations as to what is an available UNE, UNE combination or permissible commingling by agreeing to the Agreement.</p> <p>2.6 TelCove requests a longer six month transition period to ensure service continuity. In addition, TelCove proposes that the transition</p>	<p>SBC-13STATE is required to provide a Lawful UNE or Lawful UNE combination or other arrangement including a “Lawful UNE Dedicated Transport,” and Dedicated Transport is Declassified or is otherwise no longer a Lawful UNE, then SBC-13STATE shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.</p> <p>2.3 Nothing contained in the Agreement shall be deemed to constitute consent by SBC-13STATE that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC, and judicial orders, that SBC-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.</p> <p>2.4 The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p>	<p>UNE Attachment as a Lawful UNE has been declassified. Upon that notice, CLEC has a choice – it can request that it discontinue the item, in which case SBC-13STATE will do so. Or, if it doesn’t request discontinuance, SBC-13STATE will simply replace and/or reprice the item accordingly. This process will minimize disruption and disputes. SBC-13STATE will continue to provide the item as a “UNE” during the 30-day transition period between the notice and the discontinuance or repricing and/or replacement of the product. If for some reason, there is no analogous product available, SBC-13STATE’s language provides for the parties to negotiate and incorporate terms and conditions for a replacement product. SBC-13STATE’s approach is reasonable and orderly, and should help avoid disputes at the Commission.</p>

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			<p><i>the lawful and effective FCC rules and associated FCC, [] Commission, and judicial orders, SBC-13STATE and CLEC will abide by any Declassification transitional procedures that may be established by the FCC or the [] Commission for specific unbundled network elements that are Declassified and which are being used by CLEC as of the date on which Declassification occurs and eliminates CLEC's right to access the element as a UNE under Section 251. In the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. The Declassification transition procedures established by the FCC or the [] Commission, shall apply. In the situation where there are no transition procedures established by the FCC or the [] Commission, SBC-13STATE will notify CLEC in writing as to any Available UNE that has been or becomes Declassified as a result of FCC or [] Commission order.</i></p>	<p>period recognize the FCC's past determinations that it may take considerable time to implement in a reasonable fashion. TelCove proposes that rather than SBC unilaterally identifying a transition period, that the Agreement incorporate any FCC proposed transition period for the element that is being declassified. In the absence of an FCC mandated transition, TelCove proposes a reasonable transition scheme.</p>	<p>2.5 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.</p> <p>2.6 <u>Transition Procedure.</u> SBC-13STATE shall only be obligated to provide Lawful UNEs under this Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC-13STATE agrees to continue providing</p>	

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

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p><i>During a transitional period of forty-five (45) days from the date of such notice, SBC-13STATE agrees to continue providing the Declassified network element(s) identified in the notice to CLEC under the terms of this Appendix. Notwithstanding anything to the contrary in this Appendix, at the end of that forty-five (45) day period, unless CLEC has submitted an LSR or ASR, as applicable, to SBC-13STATE requesting disconnection or other discontinuance of the Declassified UNEs, SBC-13STATE shall convert the Declassified UNEs to an analogous access service, if available, or if no analogous access service is available, to such other service arrangement as SBC-13STATE and CLEC may agree upon (e.g., via a separate agreement at market-based rates or resale); provided, however, that where there is no analogous access service, if CLEC and SBC-13STATE have failed to reach agreement as to a substitute service within such forty-five (45) day period or other period of time for negotiation to which the Parties agree, then CLEC may initiate a BFR for the Declassified network element(s). If CLEC does not initiate a BFR within a forty-five (45) day period, then SBC-13STATE may disconnect the Declassified</i></p>		<p>such element(s) under the terms of this Agreement. Upon receipt of such written notice CLEC will cease ordering new elements that are identified as Declassified or as otherwise no longer being a Lawful UNE in the <u>SBC-13STATE</u> notice letter referenced in this Section 2.5. <u>SBC-13STATE</u> reserves the right to audit the CLEC orders transmitted to <u>SBC-13STATE</u> and to the extent that the CLEC has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and <u>SBC-13STATE</u>'s rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to CLEC with regard to the element(s) identified in the <u>SBC-13STATE</u> notice, including the combination or other arrangement in which the element(s) were previously provided:</p> <p>(a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or</p> <p>(b) <u>SBC-13STATE</u> and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.</p>	

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			<p><i>network element(s). The Parties agree that a true-up of rates may be necessary so that the new price of the Declassified UNE becomes effective after the forty-five (45) day period, unless the Parties agree upon a later effective date.</i></p> <p>(a) <i>Where the Declassified network element(s) are converted by SBC-13STATE (and not as a result of CLEC submitting an ASR or LSR ordering the conversion) to an analogous access service, SBC-13STATE shall provide such service(s) at the monthly recurring rates, and in accordance with the terms and conditions of SBC-13STATE applicable access tariff, including any term or volume discounts CLEC may be entitled to under that tariff, with the effective bill date being the first day following expiration of the forty-five (45) day notice period. CLEC shall not be required to pay termination charges, if any, for any Declassified element(s) that CLEC requests SBC-13STATE to disconnect. CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or</i></p> <p>(b) <i>The Parties recognize that,</i></p>		<p>Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that <i>six month thirty (30) day</i> transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if CLEC and <u>SBC-13STATE</u> have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then <u>SBC-13STATE</u> may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.</p> <p>2.6.1 The provisions set forth in this Section 2.5 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2.5 "Transition Period" to be implemented or effective as provided above. Further, Section 2.5 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement is Declassified or is otherwise no longer a Lawful UNE, even where the Agreement may already include an intervening law, change in law or other substantively similar provisions. The rights and obligations set forth in Section 2.5, above, apply in addition to any other rights and</p>	

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			<p><i>during the term of this Agreement, the FCC and/or []s Commission may order that one or more Declassified network elements shall be provided by SBC-13STATE as an unbundled network element under Section 251 of the Act or under state law ("Re-Available UNE"). No later than thirty (30) days after the effective date of such order, SBC-13state shall begin accepting orders for and provisioning such Re-Available UNE(s). In addition, no later than thirty (30) days after the effective date of such order, SBC-13STATE shall begin accepting orders for conversion of wholesale services (e.g., special access services, resold services, and network elements provided under Section 271) to Available or Re-Available UNEs under Section 251. The terms and conditions in Section ____ of this Attachment shall apply to such conversions. Special access termination charges shall not apply for converted circuits</i></p> <p>2.6.1 The provisions set forth in this Section 2.5 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2.5 "Transition Period" to be implemented or effective as</p>	<p>2.6 If a UNE is Declassified or ReClassified, TelCove should not be required to pay termination charges based on such a regulatory event.</p> <p>2.6 TelCove also inserted language that allows for reclassification. Given the regulatory flux surrounding UNEs, inclusion of such language is prudent</p>	<p>obligations that may be created by such intervening law, change in law or other substantively similar provision.</p> <p>2.6.2 Notwithstanding anything in this Agreement or in any Amendment, <u>SBC-13STATE</u> shall have no obligation to provide, and CLEC is not entitled to obtain (or continue with) access to any network element on an unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or otherwise, once such network element has been or is Declassified or is otherwise no longer a Lawful UNE. The preceding includes without limitation that <u>SBC-13STATE</u> shall not be obligated to provide combinations (whether considered new, pre-existing or existing) involving <u>SBC-13STATE</u> network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p> <p>2.15.2 Other conditions to accessing and using any Lawful UNE (whether on a stand-alone basis or in combination with other network elements or UNEs (Lawful or otherwise) may be applicable under lawful and effective FCC rules and associated lawful and effective FCC, and judicial orders and will also apply.</p>	

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			<p>provided above. The rights and obligations set forth in Section 2.5, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.</p> <p>2.6.2 Reserved for future use.</p> <p>2.15.2 Other conditions to accessing and using any Lawful UNE (whether on a stand-alone basis or in combination with other network elements or UNEs (Lawful or otherwise) may be applicable under lawful and effective FCC or State Commission rules and associated lawful and effective FCC, State Commission and judicial orders and will also apply.</p>	<p>and reasonable.</p> <p>2.6 To allow TelCove to take advantage of regulatory developments, TelCove inserted language clarifying that special access termination charges will not apply to circuits that are converted to newly available UNEs. In the instance where a UNE is declassified, the CLEC will have no option but to utilize special access. When a UNE becomes available again, the CLEC should not face special access termination charges, since such an approach would effectively remove the UNE from economic availability.</p> <p>2.6.2 TelCove deleted this section as duplicative. In addition, SBC's language seeks to exclude combinations that are allowed, such as combinations utilizing Section 271 UNEs.</p> <p>2.15.2 SBC opposes TelCove's inserted language clarifying that the Commission's rules may create additional conditions for utilizing UNEs.</p>		
1) Is TelCove entitled to use Lawful UNEs to provide exchange access service to itself?	70	2.8, 2.8.7, 2.8.9	<p>2.8 SBC-13STATE will provide CLEC nondiscriminatory access to Lawful UNEs (Act, Section 251(c)(3), Act, 47 CFR § 51.307(a)):</p> <p>2.8.7 <i>In a manner that allows CLEC purchasing access to Lawful</i></p>	<p>2.8.7 This language clarifies that CLEC may utilize UNEs to provide</p>	<p>2.8 SBC-13STATE will provide CLEC nondiscriminatory access to Lawful UNEs (Act, Section 251(c)(3), Act, 47 CFR § 51.307(a)):</p> <p>2.8.7 Intentionally Left Blank</p>	No, TelCove is not permitted under the Act to utilize UNE services for the provisioning of telecommunications services to itself. The Act clearly set forth that the unbundling requirements of the ILECs were meant to provide competitive service to end users. Additionally, SBC-13STATE's obligation to provide those UNEs available under 251(c)(3)

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2) Should any UNEs provided by SBC meet the "necessary and impair" standards of the Act?			<p><i>UNEs to use such Lawful UNEs to provide exchange access service to itself in order to provide interexchange services to subscribers (47 CFR § 51.309(b));</i></p> <p>2.8.9 Reserved for future use.</p>	<p>exchange access service in order to provide interexchange services to subscribers.</p> <p>2.8.9 Deleted because it merely restates what constitutes a UNE.</p>	<p>2.8.9 Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2)).</p>	<p>must meet the "necessary" and "impair" standards set forth in the Act. The Rule cited here by TelCove was replaced by the FCC in its TRO with new Rule 51.309, and then that Rule was vacated by the USTA II decision. So the rule cited by TelCove is no longer in existence.</p>
<p>1) What procedures should govern the combination of UNEs?</p> <p>2) May TelCove combine UNEs with other services (including Section 271 network elements) obtained from SBC or should SBC's combining obligations be limited to Section 251 UNEs?</p> <p>3) May TelCove use the functionality of a UNE "without</p>	71	<p>2.16.1</p> <p>2.16.1.1</p> <p>2.16.2</p> <p>2.16.3</p> <p>2.16.3.3</p> <p>2.16.3.3.1</p> <p>2.16.3.3.2</p> <p>2.16.3.3.3</p> <p>3.16.3.4</p> <p>3.16.3.5</p> <p>2.16.3.6</p> <p>2.16.4</p> <p>2.16.4.1</p> <p>2.16.4.2</p> <p>2.16.5</p> <p>2.16.5.1</p> <p>2.16.5.2</p> <p>2.16.5.3</p> <p>2.16.5.4</p> <p>2.16.5.5</p> <p>2.16.5.5.1</p> <p>2.16.5.5.2</p> <p>2.16.6</p> <p>2.16.6.1</p> <p>2.16.6.2</p> <p>2.16.7</p>	<p>2.16.1 Subject to the provisions hereof and upon CLEC request, <i>SBC-13STATE</i> shall meet its combining obligations involving Lawful UNEs as and to the extent required by FCC rules and orders, and <i>Verizon Comm. Inc. v. FCC</i>, 535 U.S. 467(May 13, 2002) ("<i>Verizon Comm. Inc.</i>") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.</p> <p><i>2.16.1.1 SBC-13STATE shall permit CLEC to commingle a UNE available under Section 251 or a combination of UNEs available under Section 251 with any wholesale service, including network elements available under Section 271, or obtained from an incumbent LEC. Upon request, SBC-13STATE will perform all functions necessary to commingle a UNE available under Section 251 or a combination of UNEs available under Section 251 with one or more facilities or</i></p>	<p>2.16.1.1 Combinations should be allowed. TelCove may combine and commingle Section 271 Elements and Section 251 UNEs.</p> <p>2.16.1.1 Yes. CLEC should be allowed to use the functionality of a UNE without the excessive restrictions proposed by SBC.</p>	<p>2.16.1 Subject to the provisions hereof and upon CLEC request, <i>SBC-13STATE</i> shall meet its combining obligations involving Lawful UNEs as and to the extent required by FCC rules and orders, and <i>Verizon Comm. Inc. v. FCC</i>, 535 U.S. 467(May 13, 2002) ("<i>Verizon Comm. Inc.</i>") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.</p> <p><i>2.16.1.1 Any combining obligation is limited solely to combining of Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that SBC-13STATE might offer pursuant to Section 271 of the Act.</i></p> <p>2.16.2 In the event that <i>SBC-13STATE</i> denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, <i>SBC-13STATE</i> shall provide written notice to CLEC of such denial and the basis</p>	<p>No. SBC-13STATE should not be obligated to provide combinations or commingled elements involving declassified elements given the USTA II decision.</p>

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restrictions?"			<p><i>services that CLEC has obtained at wholesale, including network elements available under Section 271, from an incumbent LEC. SBC-13STATE shall not deny CLEC access to an Available UNE under Section 251 or a combination of Available UNEs under Section 251 on the grounds that one or more of the elements: (1) is connected to, attached to, or combined with, a facility or service obtained from an incumbent LEC; or (2) shares part of SBC-13STATE's network with access services</i></p> <p>2.16.2 <i>Subject to the provisions hereof, at CLEC's request, SBC-13STATE shall also combine for CLEC any sequence of Unbundled Network Elements that SBC-13STATE "ordinarily combines" for itself or its end users. SBC-13STATE shall be required to combine Available UNEs if the requested Available UNE combination is a type ordinarily used or functionally equivalent to that used by SBC-13STATE or SBC-13STATE' end users where SBC-13STATE provides local service. An Available Unbundled Network Element combination shall not be considered "ordinarily combined," and SBC-13STATE will not have an obligation to provide the combination, if (1) SBC-13STATE</i></p>	<p>2.16.2 SBC should be required to notify TelCove within 10 business days of the request why it is denying the proposed combination. SBC has not shown why it could not do so. This would allow TelCove to communicate with its customers in an appropriate and timely manner.</p>	<p>thereof Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC-13STATE shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, <i>Verizon Comm. Inc.</i> and the Agreement, including Section 2.16 of this Appendix.</p> <p>2.16.3 In accordance with and subject to the provisions of this Section 2.16, including Section 2.16.3.2 and 2.16.5, the new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.</p> <p>2.16.3.3 The Parties acknowledge that the United States Supreme Court in <i>Verizon Comm. Inc.</i> relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty,</p>	

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p><i>does not provide services using such a combination of unbundled network elements; (2) where SBC-13STATE does provide services using such combination, such provisioning is extraordinary (i.e., a limited combination of network elements created in order to provide service to a customer under a unique and nonrecurring set of circumstances); or (3) the network element combination contains a network element that the [] Commission does not require SBC-13STATE to provide as an unbundled network element.. There shall be no prohibition against combining unbundled network elements with tariffed services. This paragraph does not limit CLEC's ability to purchase services under applicable SBC-13STATE resale tariff or under the resale appendix that is part of this Agreement while also utilizing the UNE provisions of this Agreement to the same end use customer. This paragraph does not limit CLEC's ability to permit IXCs to access ULS for the purpose of originating and/or terminating interLATA and intraLATA access traffic or limit CLEC's ability to originate and/or terminate interLATA or intraLATA calls using ULS consistent with Section ____ of this Attachment. Further, when</i></p>		<p>SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:</p> <p>2.16.3.3.1 Section 2.16, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-13STATE from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to <i>Verizon Comm. Inc.</i>, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-13STATE. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC-13STATE from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.</p> <p>2.16.3.3.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, SBC-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such</p>	

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p><i>customized routing is used by CLEC, pursuant to Section ____ of this Attachment, CLEC may direct local, local operator services, and local directory assistance traffic to dedicated transport whether such transport is purchased through the access tariff or otherwise.</i> In the event that SBC-13STATE denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, SBC-13STATE shall provide written notice to CLEC of such denial and the basis thereof <i>within ten business day of the request.</i> Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC-13STATE shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, <i>Verizon Comm. Inc.</i> and the Agreement, including Section 2.16 of this Appendix.</p> <p>2.16.3 In accordance with and subject to the provisions of this Section 2.16, including Section 2.16.3.2 and 2.16.5, the new Lawful UNE combinations set forth in the</p>		<p>non-included functions or other actions. This Section 2.16.3.3.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.16.3.3.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.</p> <p>2.16.3.3.3 Without affecting the application of Section 2.16.3.3.2 (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice</p>	

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p>Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.</p> <p>2.16.3.3 The Parties acknowledge that the United States Supreme Court in <i>Verizon Comm. Inc.</i> appears to have implied distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:</p> <p>2.16.3.3.1 Section 2.16, including any acts taken pursuant thereto, shall not</p>		<p>can be given at any time, and from time to time.</p> <p>2.16.3.4 A new Lawful UNE combination listed on a Schedule – Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.</p> <p>2.16.3.5 For a new Lawful UNE combination listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC-13STATE, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.</p> <p>2.16.3.6 Upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC-13STATE in providing the new Lawful UNE combinations set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.5. For any such work done by SBC-13STATE under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing.</p>	

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			<p>in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-13STATE or CLEC from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to <i>Verizon Comm. Inc.</i>, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-13STATE and CLEC. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC-13STATE or CLEC from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.</p> <p><i>2.16.3.3.2 If any regulatory, judicial, or legislative action determines that SBC-13STATE is relieved of any obligation to perform any combining functions or other actions under this Agreement, upon the effective date of any such regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, and after ninety (90) days notice to CLEC, SBC-13STATE shall be relieved of any obligation to perform any combining functions or</i></p>	<p>2.16.3.3.2 TelCove seeks language prohibiting SBC from unilaterally ceasing to provide combinations. TelCove inserted language requiring regulatory, judicial or legislative action. In addition, SBC should be required to give notice to CLEC sufficient to provide CLEC an opportunity for CLEC to make alternative arrangements. An immediate end to providing an existing combination should not be permitted.</p>	<p>For any such work that is not so required to be done by SBC-13STATE, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.</p> <p>2.16.4 In accordance with and subject to the provisions of this Section 2.16, any request not included in Section 2.16.3 in which CLEC wants SBC-13STATE to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC-13STATE to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.</p> <p>2.16.4.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined and the needed location(s), the order in which the Lawful UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC-13STATE Lawful UNE and the lawful network element(s) possessed by CLEC.</p> <p>2.16.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable</p>	

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			<p>other actions under this Agreement, and CLEC shall thereafter be solely responsible for any such functions or other actions.</p> <p>2.16.3.3.3 Without affecting the application of Section 2.16.3.3.2 (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.</p>		<p>cost-based fee for any combining work done by SBC-13STATE under Section 2.16.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests SBC-13STATE to perform work not required by Section 2.16.1, CLEC shall be charged a market-based rate for any such work.</p> <p>2.16.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.16 apply only in situations where each of the following is met:</p> <p>2.16.5.1 it is technically feasible, including that network reliability and security would not be impaired;</p> <p>2.16.5.2 SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;</p> <p>2.16.5.3 SBC-13STATE would not be placed at a disadvantage in operating its own network;</p> <p>2.16.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network; and</p> <p>2.16.5.5 CLEC is</p> <p>2.16.5.5.1 unable to make the combination</p>	

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

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			<p>2.16.3.4 A new Lawful UNE combination listed on a Schedule – Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.</p> <p>2.16.3.5 For a new Lawful UNE combination listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC-13STATE, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.</p> <p>2.16.3.6 Upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC-13STATE in providing the new Lawful UNE combinations set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.5. For any such work done by SBC-13STATE under Section 2.16.1, any such fee(s)</p>		<p>itself; or</p> <p>2.16.5.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 2.16.5.5 ceases if SBC-13STATE informs CLEC of such need to combine.</p> <p>2.16.6 For purposes of Section 2.16.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without limitation:</p> <p>2.16.6.1 at an SBC-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;</p> <p>2.16.6.2 for SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.</p> <p>2.16.7 Section 2.16.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 2.16.5.5 with respect to any request for a combination involving Lawful UNEs.</p>	

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			<p>shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by SBC-13STATE, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.</p> <p>2.16.4 In accordance with and subject to the provisions of this Section 2.16, any request not included in Section 2.16.3 in which CLEC wants SBC-13STATE to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC-13STATE to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.</p> <p>2.16.4.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined</p>			

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			<p>and the needed location(s), the order in which the Lawful UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC-13STATE Lawful UNE and the lawful network element(s) possessed by CLEC.</p> <p>2.16.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by SBC-13STATE under Section 2.16.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests SBC-13STATE to perform work not required by Section 2.16.1, CLEC shall be charged a market-based rate for any such work.</p> <p>2.16.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.16 apply only in situations where each of the following is met:</p> <p>2.16.5.1 it is technically feasible, including that network reliability and security would not be impaired;</p> <p>2.16.5.2 <i>There shall be no</i></p>	2.16.5.2 SBC should be prohibited		

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			<p><i>prohibition against combining unbundled network elements with tariffed services. This paragraph does not limit CLEC's ability to purchase services under applicable SBC-13STATE' resale tariff or under the resale appendix that is part of this Agreement while also utilizing the UNE provisions of this Agreement to the same end use customer. This paragraph does not limit CLEC's ability to permit IXCs to access ULS for the purpose of originating and/or terminating interLATA and intraLATA access traffic or limit CLEC's ability to originate and/or terminate interLATA or intraLATA calls using ULS consistent with Section ____ of this Attachment. Further, when customized routing is used by CLEC, pursuant to Section ____ of this Attachment, CLEC may direct local, local operator services, and local directory assistance traffic to dedicated transport whether such transport is purchased through the access tariff or otherwise. Reserved. SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;</i></p> <p>2.16.5.3 <i>Reserved.</i></p> <p>2.16.5.4 it would not undermine the</p>	<p>from placing limitations on combining UNEs with tariffed services</p> <p>2.16.5.3 SBC's language was deleted since it would place yet another restraint at its discretion on SBC's duty</p>		

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			<p>ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network; and</p> <p>2.16.5.5 CLEC is</p> <p>2.16.5.5.1 Reserved.</p> <p>2.16.5.5.2 Reserved.</p> <p>2.16.6 Reserved.</p> <p>2.16.6.1 Reserved.</p> <p>2.16.6.2 Reserved.</p> <p>2.16.7 Section 2.16.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 2.16.5.5 with respect to any request for a combination involving Lawful UNEs.</p>	<p>to combine.</p> <p>2.16.5.5-2.16.6.2. SBC's language was deleted because it seeks to place unjustifiable limits on SBC's duty to combine.</p>		
<p>1) In light of USTA II, does SBC have an obligation to covert wholesale services to UNEs?</p> <p>2) If conversions are ultimately required by lawful FCC rules or orders, what procedures should apply?</p>	72	<p>2.17</p> <p>2.17.1</p> <p>2.17.2</p> <p>2.17.3</p> <p>2.17.3.1</p> <p>2.17.4</p> <p>2.17.5</p> <p>2.17.5.1</p> <p>2.17.5.2</p> <p>2.17.6</p> <p>2.17.7</p>	<p>2.17 <u>Conversion of Wholesale Services to Lawful UNEs</u></p> <p>2.17.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion.</p>	<p>2.17 TelCove opposes SBC's insertion. SBC misreads the Court's mandate in USTA II. It also seeks to take advantage of the current absence of permanent UNE rules to attempt to argue that it is not obligated to convert wholesale services to UNEs. Such conversion is essential to CLECs if they are to utilize the UNEs to which they are entitled.</p>	<p>2.17 <u>Conversion of Wholesale Services to Lawful UNEs</u></p> <p>Upon the issuance of the Court's mandate in USTA II, and in the absence of lawful and effective FCC rules or orders requiring conversion of wholesale services to Lawful UNEs, SBC-13STATE is not obligated to and shall not perform such conversions, and CLEC shall not request such conversions. If lawful and effective FCC rules or orders require such conversions, and for all other conversion requests the following shall apply SBC-13STATE shall convert wholesale services to conversion of wholesale services to Lawful UNEs such</p>	<p>The USTA II decision vacated the FCC's conversion rules relating to special access services [51.316 and 51.318(a)], and therefore, it would be inappropriate to include language obligating SBC-13STATE to make such conversions for TelCove.</p> <p>SBC-13STATE has proposed detailed terms and conditions so that the parties can operate under the TRO's provisions without engaging in additional negotiation and dispute resolution. As to TelCove's proposed 2.17.3, TELCOVE has again failed to fully "ICA-ize" the FCC's rule by failing to acknowledge that the "except as otherwise agreed by the parties" may come outside of the ICA, e.g., ICB, and that agreements between SBC-13STATE</p>

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			<p>2.17.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p><i>2.17.3 Except as otherwise provided hereunder, SBC-13STATE shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a Lawful UNE or combination of Lawful UNEs.</i></p> <p>2.17.3.1 SBC-13STATE's may charge applicable service order charges and record change charges, <i>provided however that such charges shall be waived if the conversion is the result of SBC-13STATE ceasing to offer the UNE or combination of UNEs to CLEC.</i></p> <p>2.17.4 This Section 2.17 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or</p>	<p>2.17.3 TelCove seeks to allow the process of moving from a wholesale service or group of services to a UNE and back again to be efficient. SBC should not be allowed to erect economic barriers that prohibit the use of available UNEs.</p>	<p>conversion(s) shall be provided as follows:</p> <p>2.17.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)</p> <p>2.17.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p>2.17.3 Intentionally Left Blank</p> <p>2.17.3.1 SBC-13STATE's may charge applicable service order charges and record change charges.</p> <p>2.17.4 This Section 2.17 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Appendix.</p> <p>2.17.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service,</p>	<p>and a third party customer also need to be excluded. TelCove's ICA cannot be used to void or otherwise affect those obligations arising from independent and still valid obligations.</p> <p>SBC-13STATE does not understand TelCove's issue here. Section 2.17.4 simply indicates that the terms and conditions of Section 2.10 ("Conversion of Wholesale Services to UNEs") apply only to situations where wholesale services are converted to UNEs. This provides clarity to the Agreement.</p> <p>For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.</p>

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			<p>otherwise provided for in this Appendix.</p> <p>2.17.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), SBC-13STATE may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon <i>ninety (90) days</i> written notice to CLEC.</p> <p>2.17.5.1 This Section 2.17.5 applies to any Lawful UNE or combination of Lawful UNEs, including whether or not such Lawful UNE or combination of Lawful UNEs had been previously converted from an SBC-13STATE service.</p> <p>2.17.5.2 SBC-13STATE may exercise its rights provided for</p>	<p>2.17.5 TelCove seeks to obtain adequate notice of ninety days before SBC takes unilateral action to convert combinations.</p>	<p>or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), SBC-13STATE may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.</p> <p>2.17.5.1 This Section 2.17.5 applies to any Lawful UNE or combination of Lawful UNEs, including whether or not such Lawful UNE or combination of Lawful UNEs had been previously converted from an SBC-13STATE service.</p> <p>2.17.5.2 SBC-13STATE may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.</p> <p>2.17.6 In requesting a conversion of an SBC-13STATE service, CLEC must follow the guidelines and ordering requirements provided by SBC-13STATE any applicable laws that are applicable to converting the particular SBC-13STATE service sought to be converted.</p> <p>2.17.7 Nothing contained in this Appendix or Agreement provides CLEC with an</p>	

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Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p>hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.</p> <p>2.17.6 In requesting a conversion of an SBC-13STATE service, CLEC must follow the guidelines and ordering requirements provided by SBC-13STATE and in conformance with FCC, Commission and any applicable laws that are applicable to converting the particular SBC-13STATE service sought to be converted.</p> <p>2.17.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-13STATE's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges. <i>(By way of example, where provided for, early termination liability charges may apply upon a special access circuit being considered disconnected for billing/inventory purposes.)</i></p>		<p>opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-13STATE's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.</p>	
1) What is the appropriate commingling order charge that SBC can charge	73	2.18 2.18.1 2.18.1.1 2.18.1.3 2.18.1.4 2.18.2	2.18 <u>Commingling</u> 2.18.1 "Commingling" means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC	2.18.1.2 TelCove deleted the language as it represents an attempt by SBC to improperly limit commingling of Section 271 elements.	2.18 <u>Commingling</u> 2.18.1 "Commingling" means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC-	There can be no question that SBC-13STATE is not required to commingle UNEs with 271 checklist items. As explained by the FCC at ¶ 655, n.1990 of the <i>Triennial Review Order</i> (as modified by the <i>Errata</i>), the Section 251(c) unbundling obligation does not require SBC-13STATE to perform that

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<p>TelCove?</p> <p>2) Where processes for Commingling are not already in place, should SBC be permitted to develop and implement such processes?</p> <p>3) Are the applicable Change Management guidelines the appropriate method for establishing new OSS system changes, if any, for OSS functions related to Commingling?</p>		<p>2.18.3</p> <p>2.18.3.1</p> <p>2.18.3.1.1</p> <p>2.18.3.1.2</p> <p>2.18.9</p>	<p>has obtained at wholesale from SBC-13STATE, or the combining of a Lawful UNE, or a combination of Lawful UNEs, with one or more such facilities or services. "Commingling" means the act of commingling.</p> <p>2.18.1.1 "Commingled Arrangement" means the arrangement created by Commingling.</p> <p>2.18.1.2 <i>Reserved</i></p> <p>2.18.1.3 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC-13STATE and CLEC will develop and implement <i>mutually agreeable</i> processes, subject to any <i>mutually agreeable</i> associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p>2.18.1.4 <i>Reserved.</i></p> <p>2.18.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC rules and</p>	<p>2.18.1.3 TelCove inserted language that requires SBC to develop mutually agreeable processes to handle commingling.</p> <p>2.18.1.4 SBC seeks impermissibly to limit its obligation to commingle Section 271 Elements.</p>	<p>13STATE, or the combining of a Lawful UNE, or a combination of Lawful UNEs, with one or more such facilities or services. "Commingling" means the act of commingling.</p> <p>2.18.1.1 "Commingled Arrangement" means the arrangement created by Commingling.</p> <p>2.18.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC-13STATE offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).</p> <p>2.18.1.3 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p>2.18.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE with Lawful UNEs; accordingly, no other facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.</p> <p>2.18.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit CLEC</p>	<p>function for CLECs, and the FCC declined to impose any such obligation under 271. And in USTA II (<i>USTA v. FCC</i>, 359 F.3d 554 (D.C. Circ. 2004)), the Court upheld that FCC decision.</p> <p>By FCC decision, 271 checklist items are interstate offerings subject to Sections 201 and 202 of the Communications Act of 1934, as amended. As such, the terms and conditions under which the checklist items are offered are questions solely for the FCC, in the same way that interstate access services are outside of the jurisdiction of any State commission. Also, attempting to require or permit commingling of 271 checklist items would be directly contrary to FCC rulings, and thus not permitted by 47 U.S.C. 261.</p> <p>As to 2.18.1.3, TelCove is seeking to have the right to approve any processes and any rates, terms, and conditions applicable to commingling. SBC-13STATE cannot be in a position where each CLEC's permission must be obtained to implement processes; all CLECs cannot be expected to want the exact same processes, and SBC-13STATE cannot have separate processes for each CLEC according to its needs. Similarly, while terms and conditions, including rates, must be reached, it cannot be limited to those that are "mutually agreeable." Given these negotiations, expecting the parties to reach such a comprehensive agreement – particularly an agreement on rates – is unrealistic.</p> <p>As to SBC's proposed Section 2.18.3 and its subsections, SBC's language appropriately reflects and ICA-izes its commingling obligations per FCC rules and the TRO. SBC's obligation to commingle UNEs or combinations of UNEs with facilities or</p>

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			<p>orders.</p> <p>2.18.3 Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE (as well as requests where CLEC also wants SBC-13STATE to complete the actual Commingling).</p> <p>2.18.3.1 Reserved.</p> <p>2.18.3.1.1 Reserved.</p> <p>2.18.3.1.2 Reserved.</p> <p>2.18.9 Reserved</p>	<p>2.18.3.1-2.18.3.1.2, 2.18.9 TelCove deleted SBC's language as it seeks to impose restrictions on commingling that are unjustified. SBC appears to want to include an overly broad interpretation of its ability to restrict commingling similar to its attempts to limit combinations based on its interpretation of <u>Verizon Comms. Inc. v. FCC</u> 535 U.S. 467 (2002). Moreover, the ability for SBC to avoid commingling if it would put SBC at a "... disadvantage in operating its own network" is too vague. Technical feasibility and network reliability and security concerns are addressed in Section 2.18.3 (ii). An additional protection which appears to capture anything SBC might conceive is just too open ended.</p>	<p>to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC rules and orders.</p> <p>2.18.3 Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE (as well as requests where CLEC also wants SBC-13STATE to complete the actual Commingling), except that SBC-13STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) the CLEC is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-13STATE would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network; or (vi) CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, but such obligation under this Section ceases if SBC-13STATE informs CLEC of such need to Commingle.</p>	<p>services obtained at wholesale is generally narrower, as defined by the FCC in its TRO, than SBC's obligation to combine UNEs – and certainly is no greater than its UNE combining obligation. As the FCC and USTA II court noted, the obligation to combine UNEs is based on a non-discrimination obligation. There is no such overarching obligation to commingle. Further, the FCC did not indicate in its TRO that ILEC commingling obligations were to be treated any differently than similar obligations under Section 251; accordingly, the limitations found by the United States Supreme Court in its <u>Verizon</u> decision, <u>Verizon Comm. Inc. v. FCC</u>, 535 U.S. 467 (May 13, 2002) ("<u>Verizon Comm. Inc.</u>") should apply also to commingling. SBC's Section 2.18.3 and its subsections do just that.</p> <p>For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.</p>

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					<p>2.18.3.1 For purposes of Section 2.18.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from <u>SBC-13STATE</u> are available to CLEC, including without limitation:</p> <p>2.18.3.1.1 at an <u>SBC-13STATE</u> premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;</p> <p>2.18.3.1.2 for <u>SBC CALIFORNIA</u> only, within an adjacent location arrangement, if and as permitted by this Agreement.</p> <p>2.18.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, <u>SBC-13STATE's</u> obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass <u>SBC-13STATE</u> offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNEs under 47 U.S.C. § 251(c)(3).</p>	
Is SBC obligated to allow commingling of 47 USC 271 checklist item with UNEs?	74	2.18.1.2 2.18.1.4 2.16.1.1	<p>2.18.1.2 <i>Reserved</i></p> <p>2.18.1.4 <i>Reserved.</i></p> <p>2.16.1.1 <i>SBC-13STATE shall permit CLEC to commingle a UNE available under Section 251 or a combination of UNEs available under Section 251</i></p>	Yes. TelCove has retained the language in the agreement that requires, subject to legal limitations, SBC to commingle UNEs or combinations of UNEs with Section 271 elements.	2.18.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an <u>SBC-13STATE</u> offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).	There can be no question that SBC-13STATE is not required to commingle UNEs with 271 checklist items. As explained by the FCC at ¶ 655, n.1990 of the <i>Triennial Review Order</i> (as modified by the <i>Errata</i>), the Section 251(c) unbundling obligation does not require SBC-13STATE to perform that function for CLECs, and the FCC declined to impose

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			<i>with any wholesale service, including network elements available under Section 271, or obtained from an incumbent LEC. Upon request, SBC-13STATE will perform all functions necessary to commingle a UNE available under Section 251 or a combination of UNEs available under Section 251 with one or more facilities or services that CLEC has obtained at wholesale, including network elements available under Section 271, from an incumbent LEC. SBC-13STATE shall not deny CLEC access to an Available UNE under Section 251 or a combination of Available UNEs under Section 251 on the grounds that one or more of the elements: (1) is connected to, attached to, or combined with, a facility or service obtained from an incumbent LEC; or (2) shares part of SBC-13STATE's network with access services</i>		2.18.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE with Lawful UNEs; accordingly, no other facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.	any such obligation under 271. And in USTA II (<i>USTA v. FCC</i> , 359 F.3d 554 (D.C. Circ. 2004)), the Court upheld that FCC decision. By FCC decision, 271 checklist items are interstate offerings subject to Sections 201 and 202 of the Communications Act of 1934, as amended. As such, the terms and conditions under which the checklist items are offered are questions solely for the FCC, in the same way that interstate access services are outside of the jurisdiction of any State commission. Also, attempting to require or permit commingling of 271 checklist items would be directly contrary to FCC rulings, and thus not permitted by 47 U.S.C. 261. For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.
In light of the USTA II decision, how should EELs be defined in the ICA and should they be provisioned?	75	TelCove – 2.19 (All)	2.19 EELs Eligibility Requirements 2.19.1 Notwithstanding anything in this Agreement to the contrary SBC-13STATE agrees to make available to CLEC Enhanced Extended Links (EELs) and other forms of Unbundled Network Elements Combinations on the	2.19. TelCove believes that certain low capacity EELs should still be available for use. To the extent that high capacity loops remain available as a UNE, TelCove seeks access to necessary dedicated transport at a reasonable enough rate to compete effectively with SBC's special access offering.	Intentionally Left Blank	TelCove's proposed language, taken from SBC's Pre-USTA II K2A redlines, should be rejected. The USTA II decision vacated the FCC Rules 51.319(e) (Dedicated Transport) and 51.319(a) (4) (5), and (7) (DS1, DS3, and Dark Fiber Loops). Without these UNEs, there can be no EEL combinations.

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			<p><i>terms and conditions set forth below. SBC-13STATE shall provide UNE combinations upon request, provided that the UNE combination is technically feasible and would not undermine the ability of other carriers to access UNEs or interconnect with SBC-13STATE'S network. SBC-13STATE shall not impose any additional conditions or limitations upon obtaining access to EELs or to any other UNE combinations, other than those set out in the FCC's Triennial Review Order and in this Appendix.</i></p> <p><i>2.19.1.1 "Enhanced Extended Link" or "EEL" means a UNE combination consisting of an unbundled loop(s) and Unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNEs (including, for example, with or without multiplexing capabilities). An EEL that consists of a combination of voice grade to DS0 level UNE local loops combined with a UNE DS1 or DS3 Dedicated Transport (a "Low-Capacity EEL") shall not be required to satisfy the Eligibility Requirements set out in Section 2.19.2 below. If an EEL is made up of a combination that includes one or more of the following described combinations</i></p>			

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			<p><i>(the “High-Capacity Included Arrangements”), each circuit to be provided to each customer must be required to terminate in a collocation arrangement that meets the requirements of Section 2.15.3 below unless the EEL is commingled with a wholesale service in which case the wholesale service must terminate at the collocation). A High-Capacity Included Arrangement is either:</i></p> <p><i>2.19.1.2.1 an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service; or</i></p> <p><i>2.19.1.2.2 an unbundled dedicated DS1 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 channel termination service.</i></p>			

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			<p>2.19.2 SBC-13STATE shall make Low Capacity EELs available to CLEC without restriction. SBC-13STATE shall not, provide access to the High-Capacity Included Arrangements (Sections 2.19.1.2.1 and 2.19.1.2.2" only when CLEC satisfies all of the following conditions set forth in Section 2.23.2.1 through 2.23.2.4 for each High-Capacity Included Arrangement requested</p> <p>2.19.2.1 CLEC (directly and not via an Affiliate) has received state certification from the [] Commission to provide local voice service in the area being served</p> <p>2.19.2.2 The following criteria must be are satisfied for each High-Capacity Included Arrangement, e.g., each DS1 UNE loop combined with DS1/DS3 transport</p> <p>2.19.2.2.1 Each circuit to be provided to each customer will be assigned a local telephone number (NPA-NXX-XXXX), including to each DS1 circuit and to each DS1 equivalent circuit of a DS3 EEL. That is</p> <p>2.19.2.2.2 each DS1 equivalent circuit on a DS3 EEL arrangement</p>			

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			<p><i>must have its own Local Telephone Number assignment, so that each fully utilized DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and In addition, each</i></p> <p><i>2.19.2.2.3 DS1 or DS1 equivalent circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit; CLEC may, at CLEC's option, satisfy this condition by certifying at the time it orders the EEL(s) that it will not begin to provide service until a local number is assigned and 911 or E911 capability is provided.</i></p> <p><i>2.19.2.2.4 Collocation: Each of CLEC's DS1 and/or DS3 circuit(s) to be provided to each customer will terminate in a collocation arrangement. Where there is no single customer premises, such as where the traffic from multiple DS1 wireline end user loops are aggregated onto a DS3 transport facility, the point of aggregation will serve as the customer premises for purposes of this requirement. The collocation arrangement cannot be in an Interexchange carrier POP or an Internet service provider POP. However, CLEC may satisfy the collocation requirement through shared collocation or by connecting</i></p>			

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			<p><i>its EEL to another CLEC's entrance facility originating in that other CLEC's collocation space within SBC's central office; and</i></p> <p><i>2.19.2.2.5 Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of Section 2.19.4 of this Attachment; and</i></p> <p><i>2.19.2.2.6 For each 24 DS1 EELs loop or the other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk for the exchange of local traffic. CLEC is not required to associate the individual EEL collocation termination point with a local interconnection trunk in the same wire center.</i></p> <p><i>2.19.2.2.7 Switching: Each EEL loop circuit to be provided to each customer will be served by switching equipment that is a switch capable of switching local voice traffic.</i></p> <p><i>2.19.3 A collocation arrangement meets the requirements of Section 2.19 of this Attachment if it is:</i></p> <p><i>2.19.3.1 Established pursuant to</i></p>			

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			<p><i>Section 251(c)(6) of the Act and located at SBC-13STATE' premises within the same LATA as the customer's premises, when SBC-13STATE is not the collocator; or</i></p> <p><i>2.19.3.2 Located at a third party's premises within the same LATA as the CLEC's premises, when SBC-13STATE is the collocator.</i></p> <p><i>2.19.4 An interconnection trunk meets the requirements of Sections 2.19.2.2.5 and 2.19.2.2.6 of this Attachment if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the customer premises served by the Included Arrangement.</i></p> <p><i>2.19.5 For a new circuit to which Section 2.19.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.19.2.2.1 and Section 2.19.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.19.2.2.1 and/or Section 2.19.2.2.3 if it assigns the required Local Telephone Number(s), and</i></p>			

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			<p><i>implements 911/E911 capability, within 30 days after SBC -13STATE provisions such new circuit.</i></p> <p><i>2.19.5.1 Existing circuits, including conversions or migrations are governed by Section 2.19.2.</i></p> <p><i>2.19.6 Before accessing requesting (1) a converted High-Capacity Included Arrangement, (2) a new High-Capacity Included Arrangement, or (3) part of a High-Capacity Included Arrangement that is a commingled EEL as a UNE, CLEC must certify to all of the requirements set out in Section 2.19.2. CLEC may provide this certification by sending a confirming letter to SBC-13STATE or by completing a form provided by SBC-13STATE either on a single circuit or a blanket basis at CLEC's option. A disconnect notice for any single circuit shall be sufficient to constitute notification to SBC-13STATE that a blanket certification for multiple circuits that were part of a single order has been modified. In addition, CLEC may provide written notification to SBC-13STATE from time to time, or will provide in response to SBC-13STATE request made no more often than once each calendar year, certifying that its circuits satisfy all of the</i></p>			

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			<p><i>requirements of Section 2.19.2.</i></p> <p><i>2.19.7 In addition to any other audit rights provided for in this Agreement and those allowed by law, SBC -13STATE may obtain and pay for an independent auditor to audit, on an annual basis and only based upon cause CLEC's compliance in [] with the conditions set out in Section 2.19.1 through 2.19.4 For purposes of calculating and applying an "annual basis", it means a consecutive 12-month period, beginning upon SBC-13STATE written notice that an audit will be performed for [], subject to Section 2.15.7.4 of this Section.</i></p> <p><i>2.19.7.1 To invoke its limited right to audit, SBC-13STATE will send a Notice of Audit to CLEC, identifying the particular circuits for which SBC-13STATE alleges non-compliance and the cause upon which SBC S rests its allegations. The Notice of Audit shall also include all supporting documentation upon which SBC-13STATE establishes the cause that forms the basis of its allegations that CLEC is non-compliant. Such Notice of Audit will be delivered to CLEC with all supporting documentation no less than thirty</i></p>			

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			<p><i>(30) calendar days prior to the date upon which SBC-13STATEseek to commence an audit.</i></p> <p><i>2.19.7.2 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion that includes the auditor's determination regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.19.</i></p> <p><i>2.19.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.</i></p> <p><i>2.19.7.4 Should the independent auditor's report conclude that CLEC failed to comply in all material respects with Section 2.19, CLEC</i></p>			

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			<p><i>must true-up any difference in payments paid to SBC-13STATE and the rates and charges CLEC would have owed SBC-13STATE beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), but no earlier than the date on which this Section 2.19 of this Attachment is effective. CLEC shall submit orders to SBC-13STATE to either convert all noncompliant circuits to the appropriate service or disconnect non-compliant circuits. Conversion and disconnect orders shall be submitted within 30 days of the date on which CLEC receives a copy of the auditor's report and CLEC shall begin paying the correct rates and charges for each converted circuit beginning with the next billing cycle following SBC-13STATE' acceptance of such order, unless CLEC disputes the auditor's finding and initiates a proceeding at the Kansas Commission for resolution of the dispute, in which case no changes shall be made until the Commission rules on the dispute. With respect to any noncompliant circuit for which CLEC fails to submit a conversion order or dispute the auditor's finding within</i></p>			

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			<p><i>such 30-day time period, SBC-13STATE may initiate and effect such a conversion on its own without any further consent by CLEC. CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services. Conversion shall not create any unavoidable disruption to CLEC's customer's service or degradation in service quality. Under no circumstances shall conversion result in overtime charges being billed to CLEC for any work performed by SBC-13STATE unless CLEC agrees to such charges in advance. Following conversion, CLEC shall make the correct payments on a going-forward basis. In no event shall rates set under Section 252(d)(1) apply for the use of any UNE for any period in which CLEC does not meet the Service Eligibility Requirements conditions set forth in this Section 2.19 for that UNE, arrangement, or circuit, as the case may be. Furthermore, if CLEC disputes the auditor's finding and initiates a proceeding at the []Commission and if the Commission upholds the auditor's finding, CLEC shall true-up the payments made at UNE rates and the payments it</i></p>			

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			<p><i>should have paid.</i></p> <p>2.19.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with the Service Eligibility Requirements Criteria, CLEC shall must reimburse SBC-13STATE for the actual cost of the independent auditor's work performed in auditing CLEC's compliance with the Service Eligibility Requirements and for SBC-13STATE' necessary and reasonable internal costs incurred conducting the audit in the same manner and using the same methodology and rates that SBC-13STATE is required to pay CLEC's costs under Section 2.19.7.4.2.</p> <p>2.19.7.4 To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Requirements Criteria, SBC-13STATE shall must reimburse CLEC for its necessary and reasonable staff time and other internal reasonable staff time and other reasonable costs associated with in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc).</p>			

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			<p>2.19.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, local telephone number assignment documentation, and switch assignment documentation.</p> <p>2.19.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 2.19 in all cases and, further, the failure of SBC-13STATE to require such compliance, including if SBC-13STATE provides an EEL(s) or a Commingled EEL(s) that does not meet any eligibility criteria including those in this Section 2.19, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>			
Should SBC have an obligation to provide UNEs, combinations of UNEs, and TelCove elements and	76	2.22	2.22 Reserved for future use.	2.22 TelCove deleted SBC's language because it limits TelCove's access to 271 Elements. The language also impermissibly seeks to impose a waiver of TelCove's ability to obtain a UNE or combination from a tariff that SBC has elected to file.	2.22 The Parties intend that this Appendix Lawful UNEs contains the sole and exclusive terms and conditions by which CLEC will obtain Lawful UNEs from <u>SBC-13STATE</u> . Accordingly, except as may be specifically permitted by this Appendix Lawful UNEs, and then only to the extent permitted, CLEC and its affiliated entities	Under the plain terms and structure of Section 252, CLECs are to obtain UNEs exclusively under interconnection agreements that go through the Section 252 process of negotiation, arbitration, and approval. <i>E.g., Wisconsin Bell, Inc. v. Bie</i> , 340 F.3d 441 (7 th Cir. 2003). By its language, SBC simply seeks to make clear that the terms and conditions on which TelCove can obtain UNEs are

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Commingled Arrangements beyond the ACT and current FCC rules?					hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any <u>SBC-13STATE</u> tariff, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of <u>SBC-13STATE</u> to enforce the foregoing (including if <u>SBC-13STATE</u> fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, <u>SBC-13STATE</u> may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, <u>SBC-13STATE</u> may process any such order as being submitted under this Appendix UNE and, further, may convert any element provided under tariff, to this Appendix UNE, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by CLEC.	defined exclusively by this agreement, and that TelCove cannot end-run or evade the agreement by attempting to obtain UNEs from any tariff. Consistent with the above, SBC also proposes language making clear that if TelCove submits a UNE order under a tariff, SBC can either reject the order (because TelCove has no right to seek UNEs under tariff) or else treat it as having been submitted under the Agreement (thus ensuring that TelCove's customer still receives prompt service).

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Is SBC prohibited from utilizing cross connects designed for UNEs?	77	3.3.9	3.3.9 Cross connects designated for UNEs shall not be used by <u>SBC-13STATE</u> for any other purpose.	3.3.9 This language would prevent SBC from charging TelCove for a facility (cross connects) and then using the facility for its own purposes.	3.3.9 Intentionally Left Blank	No. SBC is the ILEC provider of Lawful UNEs for CLECs to utilize in their telecommunications business plans. When a CLEC's business plans require combinations of Lawful UNEs, the cross-connect is the media that is utilized. Cross-connects from the MDF or its equivalent are made on the SBC side of the network architecture; consequently, only SBC trained technicians can make the cross-connect on that side of the demarc. Cross-connects are not designated or reserved for UNEs. Cross-connects are utilized and applied to a combination of network elements (whether Lawful UNEs or Commingled at the time the elements are combined. The length of the cross-connect, or type of connectors used to make the cross-connect are not known until the cross-connect needs to be made. Consequently, cross-connects are not reserved.
Should the pricing principles of the Act govern the bona fide request quote?	78	6.3.12	6.3.12 Unless CLEC agrees otherwise, all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act, <i>applicable FCC rules or applicable Commission rules.</i>	6.3.12 The FCC rules or applicable commission rules should also be consulted as part of the costing process for a BFR.	6.3.12 Unless CLEC agrees otherwise, all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act.	Yes. The Telecommunication Act sets forth pricing principles for elements provided under the bona fide request process. These principles clearly provide for a just and reasonable price based upon the market demands.
1) Should the ICA contain only 2-wire and 4-wire analog and 2-wire digital interface loops in light of the recent <i>USTA II</i> decision? 2) Is TelCove allowed to order	79	8.2; 8.3.4; 8.3.5; 8.3.5.1; 8.3.5.2; 8.3.5.2.1; 18.6; 18.6.7; 18.6.8	8.2 A Lawful UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an <u>SBC-13STATE</u> Central Office and the loop demarcation point at an End User premises. <u>SBC-13STATE</u> will make available the Lawful UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an <u>SBC-13STATE</u> Central Office and the loop demarcation point at an End User premises. The Parties	8.2 No. While <i>USTA II</i> did place certain limitations on UNEs and remanded certain UNEs to the FCC, the FCC's interim rules have put in place a stand still whereby these UNEs are available. The FCC's forthcoming permanent UNE rules are likely to reinstate requirements for UNEs. TelCove therefore believes that the UNEs, such as high capacity loops at DS-1 or DS-3 loops, should be included in the Agreement.	8.2 A Lawful UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an <u>SBC-13STATE</u> Central Office and the loop demarcation point at an End User premises. <u>SBC-13STATE</u> will make available the Lawful UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an <u>SBC-13STATE</u> Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that <u>SBC-13STATE</u> shall not be obligated to provision any of the	TelCove's proposed language contains confusing references to elements eliminated from unbundling requirements by the TRO and <i>USTA II</i> . For example, in Section 8.2 TelCove specifically lists DS1, DS3 and dark fiber loops for which the impairment finding was invalidated by <i>USTA II</i> . TelCove also improperly includes terms and conditions for DS1 and DS3 loops in Section 8.3.4 apparently based upon portions of the TRO that were invalidated by <i>USTA II</i> . TelCove's reference in Section 8.2 that a Lawful UNE loop includes "but is not limited to" copper loops is confusing at best

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DS1, DS3 and dark fiber Loops following the release of the USTA II decision?			<p>acknowledge and agree that SBC-13STATE shall not be obligated to provision any of the Lawful UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC-13STATE. The Lawful UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing). The Lawful UNE Local Loop includes, but is not limited to copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services), <i>DS1, DS3, and dark fiber, where such loops are deployed in SBC-13STATE wire centers.</i> CLEC</p>	<p>8.2. TelCove's language recognizes the reality that SBC's proposed list is not exhaustive.</p>	<p>Lawful UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC-13STATE. The Lawful UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing). The Lawful UNE Local Loop copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services) (the terms and conditions for 2-wire and 4-wire xDSL loops are set forth in the xDSL and Line Splitting Appendix to, or elsewhere in this Agreement where xDSL loops are addressed. xDSL loops are not covered under this Appendix Lawful UNEs). , DS1, DS3, and dark fiber, where such loops are deployed in SBC-13STATE wire centers. CLEC agrees to operate each Lawful UNE Local Loop type within applicable technical standards and parameters.</p>	<p>as that could include OCN level loops, which were e clearly removed from unbundling requirements by the TRO. In contrast, SBC-13STATE's proposed language at Sections 8.2 and 8.3.4 clarify which loops are subject to unbundling pursuant to current law. These language offerings bring clarity to the agreement and should be adopted.</p>

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			<p>agrees to operate each Lawful UNE Local Loop type within applicable technical standards and parameters.</p> <p>8.3.4 Reserved</p> <p><i>8.3.4 4-Wire Digital UNE Local Loop</i></p> <p><i>8.3.4.1 A 4-Wire 1.544 Mbps digital loop is a transmission facility that will support DS1 service including Primary Rate ISDN (PRI). The 4-wire digital loop 1.544 Mbps supports usable bandwidth up to 1.544 Mbps.</i></p> <p><i>8.3.5 DS3 Digital UNE Local Loop</i></p> <p><i>8.3.5.1 The DS3 loop provides a digital, 45 Mbps transmission facility from the SBC-13STATE Central Office to the end user premises.</i></p> <p><i>8.3.5.2 DS3 UNE Local Loop "Caps"</i></p> <p><i>8.3.5.2.1 SBC-13STATE is not obligated to provide to CLEC more than two (2) DS3 UNE Local Loops per requesting carrier to any single End User premise location; accordingly, SBC-13STATE may reject CLEC orders for DS3 UNE Local Loops once CLEC has already obtained two of these types of loops at the same End User premise location. Further, even if SBC-13STATE accepts such orders, it</i></p>	<p>8.3.4 TelCove deleted SBC's language as it excludes UNEs that SBC is still required to provide to CLECs.</p> <p>8.3.4.4 - 18.6.8 TelCove has reinserted language that provides for additional UNEs.</p>	<p>8.3.4 As no other type of loop constitutes a Lawful UNE loop (other than 2-wire and 4-wire xDSL loops provided for elsewhere in this Agreement), SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of loop, including, but not limited to DS1, DS3 or higher capacity loops, or dark fiber loops. CLEC shall not request such loops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE provides a loop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the loop(s) has been provided to CLEC, discontinue providing such loop(s) (including any combination(s) including that loop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such loop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>	

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			<p><i>may, without further notice or liability, reject future orders and further provisioning of DS3 UNE Local Loops at the same End User premises location. At SBC-13STATE's option it may accept the order, but convert any DS3 UNE Local Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 UNE Local Loop(s) as of the date of provisioning.</i></p> <p>18.6 The applicable Loop cross connects for the purpose of CLEC connecting a SBC SOUTHWEST REGION 5-STATE and SBC NEVADA Lawful UNE Loop to a CLEC's Collocated facilities are as follows:</p> <p>18.6.7 4-Wire Digital Loop to Collocation</p> <p>18.6.8 4-Wire Digital loop to Collocation (without testing)</p>		<p>8.3.5 Intentionally Left Blank 8.3.5.1 Intentionally Left Blank 8.3.5.2 Intentionally Left Blank</p> <p>18.6 The applicable Loop cross connects for the purpose of CLEC connecting a SBC SOUTHWEST REGION 5-STATE and SBC NEVADA Lawful UNE Loop to a CLEC's Collocated facilities are as follows:</p> <p>18.6.7 Intentionally Left Blank 18.6.8 Intentionally Left Blank</p>	
Is it appropriate to allow TelCove to install its own HVPE?	80	8.2.1	<p>8.2.1 When a Lawful UNE Local Loop is ordered to a high voltage area, the Parties understand and agree that the Lawful UNE Local Loop will require a High Voltage Protective Equipment (HVPE) (e.g., a positron), to ensure the safety and integrity of the network, the Parties' employees and/or representatives, and the CLEC's End User. Therefore, any request by</p>	<p>8.2.1 TelCove should be allowed to provide its own HVPE device if it meets industry standards. TelCove should not be limited to an HVPE provided by SBC at a marked up price</p>	<p>8.2.1 When a Lawful UNE Local Loop is ordered to a high voltage area, the Parties understand and agree that the Lawful UNE Local Loop will require a High Voltage Protective Equipment (HVPE) (e.g., a positron), to ensure the safety and integrity of the network, the Parties' employees and/or representatives, and the CLEC's End User. Therefore, any request by CLEC for a Lawful UNE Local Loop to a high voltage area will be</p>	<p>No. SBC-13STATE is responsible for training all field technicians on the equipment it uses in the field for both efficiency and safety. If TelCove were allowed to install its owns HVPE, then SBC-13STATE faces an incompatibility of the equipment in a high voltage area. Additionally, SBC's technicians would not be knowledgeable about the specific equipment and this could create a major safety concern.</p>

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			CLEC for a Lawful UNE Local Loop to a high voltage area will be submitted by CLEC to SBC-13STATE via the BFR process set forth in Section 6 "Bona Fide Request," and CLEC shall be required to pay SBC-13STATE for any HVPE that is provisioned by SBC-13STATE to CLEC in connection with the CLEC's Lawful UNE Local Loop order to the high voltage area. <i>In the alternative, CLEC can provide its own HVPE provided the HVPE meets SBC-13STATE's or other appropriate industry standards.</i>		submitted by CLEC to SBC-13STATE via the BFR process set forth in Section 6 "Bona Fide Request," and CLEC shall be required to pay SBC-13STATE for any HVPE that is provisioned by SBC-13STATE to CLEC in connection with the CLEC's Lawful UNE Local Loop order to the high voltage area.	
Should routine network modifications apply to fiber to the home or fiber to the curb loops?	81	8.5.6	<p>8.5 <u>Routine Network Modifications – Lawful UNE Local Loops</u></p> <p>8.5.6 Deliberately omitted.</p>	<p>8.5 - The routine network modification language should apply to all UNEs, including those that were remanded.</p> <p>8.5.3 TelCove's proposed language tracks existing FCC regulations and standards for the definition of routine network modifications.</p> <p>8.5.7 - TelCove language clarifies that TelCove will not be financially responsible for any network modification not requested by TelCove.</p>	<p>8.5 <u>Routine Network Modifications – Lawful UNE Local Loops</u></p> <p>8.5.6 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC-13STATE's hybrid loops, only with respect to any existing capabilities of SBC-13STATE's hybrid loops. SBC-13STATE has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.</p>	SBC's proposed language reflects the FCC's findings with respect to routine network modifications adopted by the FCC in its TRO and as subsequently clarified by the FCC in its Order on Reconsideration. In its Order on Reconsideration released on October 18, 2004, the FCC made certain clarifications to its routine network modifications findings and rule adopted by the FCC in its TRO. In Paragraph 20 of its Order on Reconsideration, the FCC specifically states: "In the <i>Triennial Review Order</i> , the Commission required incumbent LECs to make routine network modifications to unbundled transmission facilities used by competitive carriers where the requested transmission facility has already been constructed. In defining the term "routine network modification" the Commission concluded that incumbent LECs must perform those modifications that they would regularly perform for their own retail customers. In the <i>Triennial Review Order</i> , we prohibited "any incumbent LEC practice, policy or procedure that has the effect of disrupting or

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						degrading access to the TDM-based features, functions, and capabilities of hybrid loops." BellSouth and SureWest request clarification on the applicability of this precedent to "packet-based networks." Our rules limit the unbundling obligations placed on hybrid loop, FTTH loop, and now FTTC loop deployment. Accordingly, we clarify that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability. In addition, the FCC specifically stated: "Of course, our rules addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or to the FTTC loops." See FN 69 of Order on Reconsideration. SBC's proposed language reflects the FCC's findings in its TRO and Order on Reconsideration as to the extent of SBC's routine network modification obligations insofar as they relate to the TDM capabilities of SBC's hybrid loops and that it has no such obligations with respect to FTTH or FTTC loops. For these reasons, SBC's proposed language should be adopted.
Given the <i>USTA II</i> decision, is TelCove allowed access to subloops other than 2-wire and 4-wire analog and 2-wire digital?	82	9.3.4; 9.4.4	9.3.4 "Digital Lawful UNE Subloop" may be deployed on non-loaded copper cable pairs, channels of a digital loop carrier system, channels of a fiber optic transport system or other technologies suitable for the purpose of providing 160 Kbps and 1.544 Mbps Lawful UNE Subloop transport. 9.4.4 <i>Reserved</i>	9.3.4 and 9.4.4. High Capacity DS-1 loops should be included in subloops. 9.4.4 TelCove disagrees with SBC's conclusion that no other subloops are	9.3.4 "Digital Lawful UNE Subloop" may be deployed on non-loaded copper cable pairs, channels of a digital loop carrier system, channels of a fiber optic transport system or other technologies suitable for the purpose of providing 160 Kbps and 1.544 Mbps Lawful UNE Subloop transport. 9.4.4 As no other type of Subloop constitutes a Lawful UNE subloop, SBC-13STATE is not obligated under this	No. The <i>USTA II</i> decision has made clear that only 2-wire and 4-wire analog and 2-wire digital loops are required to be made available as 251 elements. This requirement then quite naturally extends to the available subloops that TelCove may order. Accordingly, TelCove is not entitled to subloops providing 1.544 Mbps capacity as it suggests with its language. As with the loops that have been removed, TelCove still has the ability to order these elements by other means outside of the 251 requirements. SBC's proposed language makes

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				available.	Section 251/252 Agreement to provide any other type of subloop. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and <u>SBC-13STATE</u> provides a subloop(s) that is not described or provided for in this Agreement, <u>SBC-13STATE</u> may, at any time, even after the subloop(s) has been provided to CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of <u>SBC-13STATE</u> to refuse to provide, including if <u>SBC-13STATE</u> provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.	clear the subloops types available under this agreement and therefore, should be adopted.
Is TelCove responsible for the relocation costs of a Subloop Access Arrangement	83	9.14.3	9 14.3 If the relocation is requested by CLEC, <u>SBC-12STATE</u> shall then provide the CLEC an estimate to terminate their facilities as part of the relocation of the site including the applicable SAA. This	TelCove agrees to SBC's proposal.	9 14.3 If the relocation is requested by CLEC, <u>SBC-12STATE</u> shall then provide the CLEC an estimate to terminate their facilities as part of the relocation of the site including the applicable SAA. This process may require a site visit with the CLEC and <u>SBC-12STATE</u>	Yes. The full section, which is not represented in these language sections, speaks to the occurrence of a relocation need outside of SBC-13STATE's control. In these circumstances, whether they are the result of government or municipal demands or the result of extreme weather conditions, SBC-13STATE provides

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when they request such action?			process may require a site visit with the CLEC and <u>SBC-12STATE</u> engineer. CLEC shall not be liable for any costs associated with a relocation initiated by <u>SBC-12STATE</u> .		engineer. CLEC shall not be liable for any costs associated with a relocation initiated by <u>SBC-12STATE</u> .	TelCove, like other CLECs, the opportunity to decide whether to relocate their subloop access arrangement. If the business decision is to relocate, it only make since that they should incur the costs for such a relocation.
Given the USTA II decision, should TelCove be allowed to purchase UNE switching in this ICA?	84	Section 11 (All); 3.2; 3.2.1; 18.5; 18.5.1; 18.5.2; 18.5.3; 18.8; 18.8.1; 18.8.2; 18.8.3; 18.9 – 18.9.5; 18.10 - 18.10.4 18.13 - 18.13.2; 18.14 - 18.14.2	<p>11. UNE LOCAL SWITCHING (ULS)</p> <p>11.1 <i>Reserved</i></p> <p>11.1.1 For purposes of this Appendix, local circuit switching (Local Switching) is defined as follows: <i>Subject to the other terms and conditions of this Appendix, SBC-12STATE shall provide Lawful UNE Local Switching, including tandem switching (Lawful ULS) under the following terms and conditions in this subsection. Lawful ULS is defined as follows:</i></p> <p>11.1.1.1 all line-side and trunk-side facilities as defined in TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and</p> <p>11.1.1.2 all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and</p>	11. TelCove believes that local switching should be included in the Agreement because it is required under Section 271. In addition, the pending UNE rules may incorporate such switching as a 251 UNE. . The remaining language in dispute discusses implementation of such a UNE.	<p>11. LOCAL SWITCHING (ULS)</p> <p>11.1 As no local circuit switching constitutes Lawful UNE switching, <u>SBC-13STATE</u> is not obligated under this Section 251/252 Agreement to provide any type of local circuit or other switching, and CLEC shall not request local circuit or other switching under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and <u>SBC-13STATE</u> provides local circuit or other switching under this Agreement, <u>SBC-13STATE</u> may, at any time, even after the local circuit or other switching has been provided to CLEC, discontinue providing such local circuit or other switching (including any combination(s) including local circuit or other switching) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of <u>SBC-13STATE</u> to refuse to provide, including if <u>SBC-13STATE</u> provides or continues to provide, access to local circuit or other switching (whether on a stand-alone basis,</p>	<p>In light of the USTA II ruling, local switching is no longer required to be provided. TelCove may certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC-13STATE is more than willing to discuss further with TelCove outside of the 251/252 context. In light of the Court's vacatur of the mass market UNE switching obligation, SBC-13STATE's language should be adopted.</p> <p>For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.</p>

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			<p>Centrex, as well as any technically feasible customized routing functions.</p> <p>11.1.3 <u>SBC CONNECTICUT</u> shall provide lawful unbundled local circuit switching pursuant to Sections 18.2.6 (Local Switching), 18.2.11 (Lawful Unbundled Network Element – Local Switching/Shared Transport) and, to the extent applicable, Section 18.2.10 (Lawful Unbundled Network Element-Rebundled Service (Lawful UNE-RS)) of the Connecticut Access Service Tariff, as may be modified from time to time. Those Tariff Sections apply as may be supplemented by this Section (e.g., specific provision applies to <u>SBC-13STATE</u>, application to <u>SBC CONNECTICUT</u> expressly addressed) and, to the extent of any inconsistency between such Tariff Sections and a supplementing provision, the supplementing provision shall control. In the event that any of the foregoing Tariffs are withdrawn in whole, then the provisions applicable to <u>SBC-12STATE</u> (as well as those applicable to <u>SBC-13STATE</u>) shall apply between <u>SBC CONNECTICUT</u> and CLEC, unless the Parties otherwise agree. Nothing in this Appendix nor any other provision of the Agreement obligates <u>SBC CONNECTICUT</u> to maintain, or</p>		<p>in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p> <p>11.1.1 For purposes of this Appendix, local circuit switching (Local Switching) is defined as follows:</p> <p>11.1.1.1 all line-side and trunk-side facilities as defined in TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and</p> <p>11.1.1.2 all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.</p> <p>3.2 This Section describes the connection methods under which <u>SBC-13STATE</u> agrees to provide CLECs with access to Lawful UNE Local Loops and the conditions under which <u>SBC-13STATE</u> makes these methods available. These methods provide CLEC access to multiple <u>SBC-13STATE</u> Lawful UNEs that the CLEC may then combine. The methods listed below provide CLEC with access to Lawful UNEs without compromising</p>	

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			<p><i>otherwise affects any SBC CONNECTICUT right to withdraw (or seek the withdrawal of), any tariff, including the foregoing Tariffs, and SBC CONNECTICUT fully reserves its rights with respect thereto.</i></p> <p>11.2 Lawful ULS for Mass Market Customers</p> <p>11.2.1 SBC-13STATE shall only provide Lawful ULS to CLEC to serve Mass Market Customers in those geographic areas, if any, where Lawful ULS has not been Declassified.</p> <p>11.2.2 "Mass Market Customer" is used herein as in the FCC's Triennial Review Order, FCC 03-36 released August 21, 2003 ("Triennial Review Order"), and generally refers to an End User being served by a DS0 loop who is not an Enterprise Market Customer.</p> <p>11.2.3 Upon a state Commission finding that Lawful ULS for Mass Market Customers is or should be Declassified (including that any CLEC impairment could be cured by access on a transitional basis as described in 11.2.4 hereof), CLEC in that market shall commit to an implementation plan with SBC-13STATE for the migration of the embedded Lawful ULS Mass Market Customer base within 2 months of</p>		<p>the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.</p> <p>3.2.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine Lawful UNE Local Loops within a requested SBC-13STATE Central Office.</p> <p>18.5 Intentionally Left Blank</p> <p>18.5.1 Intentionally Left Blank</p> <p>18.5.2 Intentionally Left Blank</p> <p>18.5.3 Intentionally Left Blank</p> <p>18.8 Intentionally Left Blank</p> <p>18.8.1 Intentionally Left Blank</p> <p>18.8.2 Intentionally Left Blank</p> <p>18.8.3 Intentionally Left Blank</p> <p>18.9 The applicable cross connects for the purpose of a CLEC connecting a SBC CALIFORNIA Lawful UNE Loop to a CLEC's Collocated facility are as follows:</p> <p>18.9.1 Voice Grade/ISDN EISCC</p> <p>18.9.2 DS-0 EISCC</p> <p>18.9.3 Intentionally Left Blank</p> <p>18.9.4 Intentionally Left Blank</p> <p>18.9.5 DSL Shielded Cross Connect to Collocation</p> <p>18.10 The applicable cross connects for SBC MIDWEST REGION 5-STATE Lawful</p>	

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			<p><i>the state Commission determination as provided for herein.</i></p> <p><i>11.2.3.1 CLEC may no longer obtain access to Lawful ULS to serve any Mass Market Customer where Lawful ULS has been Declassified 5 months after the state Commission determination. Thereafter, except for the migration period provided for in Section 11.2.3.2 hereof or except, where applicable, on a transitional basis as described in Section 11.2.4 hereof, SBC-13STATE shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving Mass Market Customers where Lawful ULS has been Declassified.</i></p> <p><i>11.2.3.2 CLEC shall submit the orders necessary to migrate its embedded base of Mass Market Customers off of Lawful ULS in accordance with the following timetable, measured from the day of the state Commission determination. For purposes of calculating the number of Mass Market Customers who must be migrated, the embedded base of Mass Market Customers shall include all Customers served using Lawful ULS that are not Customers being served with transitional Lawful ULS as described in Section</i></p>		<p>UNE Loop is as follows:</p> <p>18.10.1 2-Wire</p> <p>18.10.2 Intentionally Left Blank</p> <p>18.10.3 Intentionally Left Blank</p> <p>18.10.4 Intentionally Left Blank</p> <p>18.13 Intentionally Left Blank</p> <p>18.13.1 Intentionally Left Blank</p> <p>18.13.2 Intentionally Left Blank</p> <p>18.14 Intentionally Left Blank</p> <p>18.14.1 Intentionally Left Blank</p> <p>18.14.2 Intentionally Left Blank</p>	

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			<p>11.2.4.</p> <p>11.2.3.2.1 Month 13 (days 361-390 from date of the state Commission determination): CLEC must submit orders for one-third of all its Mass Market Customers beginning no later than day 361, such that those Customers are migrated by the end of that 390th day;</p> <p>11.2.3.2.2 Month 20 (days 571-600): CLEC must submit orders for half of its remaining Mass Market Customers beginning no later than day 571, such that those Customers are migrated by the end of that 600th day;</p> <p>11.2.3.2.3 Month 27 (days 781-810): CLEC must submit orders for its remaining Mass Market Customers beginning no later than day 781, such that those Customers are migrated by the end of that 810th day.</p> <p>11.2.3.3 CLEC and <u>SBC-13STATE</u> shall jointly submit the details of their implementation plans (which plans shall include the timing and volume of order submission that take into account <u>SBC-13STATE's</u> system capacities, including those for ordering and provisioning, and take into account <u>SBC-13STATE's</u> hot cut processes) for each market to the state Commission within two</p>			

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			<p><i>months of the state Commission's determination that requesting Telecommunications Carriers are not impaired without access to Lawful ULS for Mass Market Customers in a given geographic market. CLEC shall also notify the state Commission when it has submitted all of its orders for migration. <u>SBC-13STATE</u> shall notify the state Commission when it has completed the migration.</i></p> <p><i>11.2.3.3.1 This Agreement shall not be required to be amended to reflect the implementation plans, including if such plans are inconsistent with the provisions of this Agreement.</i></p> <p><i>11.2.4 If the state Commission has determined that transitional ("rolling") access would cure, or cures, any impairment with respect to Mass Market Customers in a particular geographic market, <u>SBC-13STATE</u> shall make Lawful ULS available to CLEC for 90 days or more, as specified by the state Commission. The time limit set by the state Commission shall apply to each request for access to Lawful ULS by CLEC on a per-Customer basis.</i></p> <p><i>11.2.4.1 "Rolling" access means the use of Lawful ULS for a limited period of time for each Mass Market Customer to whom CLEC seeks to</i></p>			

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			<p><i>provide local service. SBC-13STATE shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving a specific Mass Market Customer after that limited period of time.</i></p> <p><i>11.2.4.2 This Agreement shall not be required to be amended to reflect the implementation of any transitional (“rolling”) access. If the Agreement is not amended (and/or until amended), such transitional (“rolling”) access shall be provided in accordance with the state Commission’s order(s) and the applicable FCC rules and orders.</i></p> <p><i>11.3 Lawful ULS for Enterprise Market Customers</i></p> <p><i>11.3.1 SBC-13STATE shall only provide Lawful ULS to CLEC to serve Enterprise Market Customers in those geographic areas, if any, for which a state Commission has petitioned the FCC for a waiver and the FCC has granted such waiver, in accordance with 47 CFR § 51.319(d)(3), and then only as required by such waiver.</i></p> <p><i>11.3.2 “Enterprise Market Customer” is used herein as in the Triennial Review Order and generally refers to an End User being served by a DS1 and higher</i></p>			

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			<p><i>capacity loop or being served at a single location by a number of DS0 loops that exceeds the maximum number of DS0 loops (generally referred to as the "DS0 cut-off") established by applicable FCC rules or orders, including as set by the state Commission for the State where the Customer is located pursuant to such rules or orders.</i></p> <p><i>11.3.3 For purposes of 11.3.2, the provider of the loop(s) to the Customer being served by the loop(s) is not relevant to the application of this Section 11.3. By way of examples only, the loop provider may be <u>SBC-13STATE</u>, CLEC, a third party, another Telecommunications Carrier or the customer itself, each without affecting the application of this Section 11.3 or the application of the definition of "Enterprise Market Customer".</i></p> <p><i>11.3.4 Upon written request by <u>SBC-13STATE</u>, CLEC shall be obligated to disclose information, including customer account information sufficient for <u>SBC-13STATE</u> to make determinations under, and apply, the Enterprise Market Customer provisions.</i></p> <p><i>11 3.5 The "DS0 cutoff" shall be determined as provided in lawful and effective FCC rules and orders.</i></p>			

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			<p>11.3.5.1 In determining whether <u>SBC-13STATE</u> may exercise its rights under this Section in any particular case, the CLEC shall be obligated to disclose information, including customer account information similar to customer service records that <u>SBC-13STATE</u> provides to the CLEC through pre-ordering process.</p> <p>11.3.5.2 Nothing in this Section 11.3.5 shall preclude CLEC from using its own facilities, resold services, or any other facilities, services or serving arrangements (except through use of Lawful ULS) to provide additional services to an End User account with respect to which <u>SBC-13STATE</u> may exercise its rights under this Section.</p> <p>11.4 <u>Specific Terms and Conditions for Lawful Unbundled Local Circuit Switching (ULS)</u></p> <p>11.4.1 Lawful ULS uses routing instructions resident in the <u>SBC-13STATE</u> switch to direct all CLEC traffic, except as may be Customized Routed pursuant to this Agreement.</p> <p>11.4.2 Vertical features, CLASS features, and other features, functions, and capabilities loaded and activated in the <u>SBC-13STATE</u> switch providing the Lawful ULS</p>			

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			<p>port are available with Lawful ULS. Access to any other features, functions, or capabilities loaded in the <u>SBC-13STATE</u> switch but that are not activated, or access to features loaded and activated but which are not offered by the <u>SBC-13STATE</u>, including not offered as sought by the requesting CLEC (e.g., a feature offered with one port type but sought for another port type), shall be requested through a Bona Fide Request (BFR). "Loaded" in the switch means that it is included in the software installed in the switch. "Activated" in the switch means that the licensing fees are current; that no further license, right to use, or other fee needs to be paid to, and no enabling code or other mechanism or method needs to be obtained from, a third party; and that translations and USOCs for use with Lawful ULS are in place such that ordering, billing and provisioning wholesale processes have been implemented.</p> <p>11.4.3 <u>SBC-13STATE</u> will allow CLEC to designate the features and functions that are available on a particular Lawful ULS port to the extent such features and functions are loaded and activated in that switch or, as may be provided through the Bona Fide Request process. When CLEC purchases</p>			

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			<p><i>Lawful ULS in SBC-13STATE, CLEC will be required to designate the features and functions that are to be included on each Lawful ULS port.</i></p> <p><i>11.4.4 SBC-13STATE will not require the BFR process for switch features that have been activated and loaded in the switch and that have been requested or provisioned previously in a UNE environment, i.e., ordering, billing and provisioning processes have been implemented.</i></p> <p><i>11.4.5 Lawful ULS as provided by SBC-13STATE includes standard Central Office treatments (e.g., busy tones, vacant codes, fast busy, etc.), supervision and announcements.</i></p> <p><i>11.4.6 SBC-13STATE will control congestion points (such as those caused by radio station call-ins and network routing abnormalities) using appropriate network capabilities. CLEC agrees to respond to SBC-13STATE's notifications regarding network congestion.</i></p> <p><i>11.4.7 SBC-13STATE will perform testing through Lawful ULS for CLECs in the same manner and frequency that it performs for its own customers that have a service using an equivalent switching port.</i></p>			

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			<p>11.4.8 <i>Where the technical capability is available, SBC-13STATE will provide usage detail for Lawful ULS ports in accordance with and subject to other application provisions of this Agreement. Refer to State specific Appendix Pricing for charges for daily usage detail records, and the usage record provisions, including those addressing Daily Usage Feed (DUF) provisions of this Agreement.</i></p> <p>11.4.9 <i>SBC-13STATE will provide CLEC the function of blocking calls (e.g., 900 calls, international calls (IDDD), and toll calls) by line or trunk to the extent that SBC-13STATE provides such blocking capabilities to its End Users and to the extent required by Federal and/or State law.</i></p> <p>11.4.10 <i>Where processes for Lawful Unbundled Local Circuit Switching requested, whether alone or in conjunction with any other Lawful UNE(s) or service(s), pursuant to this Agreement are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. In so doing, the Parties will comply with any applicable Change Management guidelines.</i></p> <p>11.5 <i>Customized Routing</i></p>			

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			<p><i>11.5.1 Subject to switch limitations, Customized Routing is available upon CLEC request via the BFR Process to Customize Route Operator Services, Directory Assistance, and/or other traffic as required by State jurisdiction. CLEC will pay the Customized Routing charges reflected in State-specific Appendix Pricing.</i></p> <p><i>11.5.2 "Customized Routing" means the function of designating particular outgoing trunks associated with Lawful ULS, to carry certain classes of traffic originating from the CLEC's End Users being served with Lawful ULS.</i></p> <p><i>11.5.3 <u>Customized Routing of OS/DA with Lawful ULS</u></i></p> <p><i>11.5.3.1 CLEC can only mix Lawful ULS and custom routing within a <u>SBC-13STATE</u> end office switch where CLEC chooses to custom route all of its OS and/or all of its DA (OS/DA) traffic for its End Users served by <u>SBC-13STATE</u> Lawful ULS ports in that <u>SBC-13STATE</u> end office switch. If this custom routing for OS/DA is chosen in a given <u>SBC-13STATE</u> end office switch, then all End Users served via Lawful ULS ports in that switch will have their OS/DA traffic routed</i></p>			

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			<p>over the same custom route designated by CLEC.</p> <p>11.5.3.2 CLEC must provide SBC-13STATE routing instructions necessary to establish such custom routing of OS/DA traffic in those end offices where CLEC has End Users served via Lawful ULS ports. CLEC will be charged by SBC-13STATE for the establishment of each custom route for OS or DA traffic in an end office switch.</p> <p>11.5.3.3 SBC-13STATE will direct all custom routed local OS and/or local DA calls using the Advanced Intelligence Network programming developed to be compatible with Lawful ULS to a specific trunk group associated with a Lawful ULS Trunk Port or over an existing dedicated trunk group designated by CLEC.</p> <p>11.5.3.4 CLEC will request custom OS/DA routing for use with Lawful ULS other than described in this Section via the Bona Fide Request process.</p> <p>11.5.3.5 Where processes for any Customized Routing requested, whether alone or in conjunction with any other Lawful UNE(s) or service(s), pursuant to this Agreement are not already in place, SBC-13STATE will develop and</p>			

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			<p><i>implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</i></p> <p>11.6 <u>Lawful ULS Usage Sensitive Rate Element</u></p> <p><i>11.6.1 Usage sensitive Lawful ULS rates will apply according to the rates set forth in Appendix Pricing. Unless otherwise set forth in an Appendix Pricing for a particular State, usage rates will apply to Lawful ULS on a per-minute basis. See the Appendix Pricing for the State-specific ULS rates for SBC-12STATE and Section 18 of the Connecticut Access Service Tariff for SBC CONNECTICUT.</i></p> <p>11.7 <u>Switch Ports</u></p> <p><i>11.7.1 Where SBC is obligated to provide Lawful ULS, in SBC-13STATE, a Switch Port is a termination point on the end office switch through which Lawful ULS is accessed. Switch Ports are provided in various types, each of which provides access to an established set of Lawful ULS features, functions and capabilities based on the switch and port type providing the Lawful ULS. For SBC-13STATE, the available Switch Ports and their respective rates are</i></p>			

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PART 2 – UNBUNDLED NETWORK ELEMENTS – Issues 68 – 89

Issue Statement	Issue No.	Attachment and Section(s)	TELCOVE Language	TELCOVE Preliminary Position	SBC Language	SBC Preliminary Position
			<p><i>reflected in State-specific Appendix Pricing. For SBC CONNECTICUT, the available Switch Ports and their respective rates are reflected in the Connecticut Access Service Tariff.</i></p> <p>3.2 This Section describes the connection methods under which SBC-13STATE agrees to provide CLECs with access to Lawful UNE Local Loops, Lawful UNE switch ports, and Lawful UNE Dedicated Transport and the conditions under which SBC-13STATE makes these methods available. These methods provide CLEC access to multiple SBC-13STATE Lawful UNEs that the CLEC may then combine. The methods listed below provide CLEC with access to Lawful UNEs without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.</p> <p>3.2.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine Lawful UNE Local Loops, Lawful UNE Local Circuit Switching ports, and Lawful UNE Dedicated Transport within a requested SBC-13STATE Central Office.</p> <p>18.5 The applicable Switch Port cross connects to the Lawful UNE Connection Methods point of</p>			

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			<p>access for the purpose of CLEC combining Switch Ports to another <u>SBC-13STATE</u> Lawful UNE are as follows:</p> <p>18.5.1 Analog Line Port to Lawful UNE Connection Methods point of access</p> <p>18.5.2 ISDN Basic Rate Interface (BRI) Line Port to Lawful UNE Connection Methods point of access</p> <p>18.5.3 Analog DID Trunk Port to Lawful UNE Connection Methods point of access</p> <p>18.8 The applicable Port cross connects for the purpose of CLEC connecting an <u>SBC SOUTHWEST REGION 5-STATE</u> and Port Lawful UNE to a CLEC's Collocated facilities are as listed in the appropriate State-specific Appendix Pricing.</p> <p>18.8.1 Analog Line Port to Collocation</p> <p>18.8.2 ISDN Basic Rate Interface (BRI) Line Port to Collocation</p> <p>18.8.3 Analog DID Trunk Port to Collocation</p> <p>18.9 The applicable cross connects for the purpose of a CLEC connecting a <u>SBC CALIFORNIA</u></p>			

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			<p>Lawful UNE Loop, Lawful UDT or Lawful UNE Port to a CLEC's Collocated facility are as follows:</p> <p>18.9.1 Voice Grade/ISDN EISCC</p> <p>18.9.2 DS-0 EISCC</p> <p>18.9.3 DS-1 EISCC</p> <p>18.9.4 DS-3 EISCC</p> <p>18.9.5 DSL Shielded Cross Connect to Collocation</p> <p>18.10 The applicable cross connects for SBC MIDWEST REGION 5-STATE Lawful UNE Loop or Lawful UNE Ports are is as follows:</p> <p>18.10.1 2-Wire</p> <p>18.10.2 DS-3</p> <p>18.10.3 LT1</p> <p>18.10.4 LT3</p> <p>18.13 The applicable Lawful UNE Switch Port cross connects to the Adjacent Location Method of Accessing UNEs for the purpose of a CLEC combining a SBC CALIFORNIA Lawful UNE Port with a CLEC's own facilities point of access are as follows:</p> <p>18.13.1 Analog Line Port to Adjacent Location Method to point of access</p> <p>18.13.2 ISDN BRI Port to Adjacent Location Method to point of access</p>			

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			<p>18.14 Cross Connects, required for the Lawful UNE platform, from Lawful UNE Loops to Lawful UNE Ports for the purpose of combining a <u>SBC-7STATE</u> Lawful UNE 2 -Wire Loop with a <u>SBC-7STATE</u> Lawful UNE Port are as follows:</p> <p>18.14.1 Analog Loop to Analog line Port</p> <p>18.14.2 2-Wire Digital Loop to ISDN BRI Port</p>			
In light of USTA II, should UNE shared transport be provided in this ICA?	85	Section 12 (All)	<p>12. <u>UNE</u> SHARED TRANSPORT (UST)</p> <p>12.1 Subject to the other terms and conditions of this Appendix, <u>SBC-12STATE</u> shall provide Lawful UNE Shared Transport (UST) under the following terms and conditions in this subsection.</p> <p>12.1.1 <u>SBC CONNECTICUT</u> shall provide lawful unbundled shared transport pursuant to Section 18.2.11 (Unbundled Network Element – Local Switching/Shared Transport) and, to the extent applicable, Section 18.2.10 (Lawful Unbundled Network Element-Rebundled Service (Lawful UNE-RS)) of the Connecticut Access Service Tariff, as may be modified from time to time. Those Tariff Sections apply as may be supplemented by this Section (e.g., specific provision applies to <u>SBC-</u></p>	Yes. To the extent that Unbundled Local Switching is available, shared transport should be available. Shared Transport should also be made available for purposes of Transit. CLECs are "impaired" without access to shared transport between local tandem switches when they "transit traffic" - that is when they transport traffic that originates on their network to other carriers' networks. In USTA II, the court acknowledged that the FCC had "recognized the claim, saying that it proposed to address the issue in a pending rulemaking on intercarrier compensation."	<p>12. SHARED TRANSPORT (ST)</p> <p>12.1 As no local circuit switching constitutes Lawful UNE switching, <u>SBC-13STATE</u> is not obligated under this Section 251/252 Agreement to provide any type of shared transport. CLEC shall not request shared transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and <u>SBC-13STATE</u> otherwise provides shared transport under this Agreement, <u>SBC-13STATE</u> may, at any time, even after the shared transport has been provided to CLEC, may discontinue providing such shared transport (including any combination(s) including shared transport) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of <u>SBC-13STATE</u> to refuse to provide, including if <u>SBC-</u></p>	<p>In light of the USTA II decision which has vacated the UNE mass market switching obligation, there is no need for TelCove's language regarding unbundled shared transport inasmuch as unbundled shared transport, both technically and under FCC rules, is only available in conjunction with use of UNE switching. SBC-13STATE's position should be adopted.</p> <p>For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.</p>

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			<p><i>13STATE</i> application to <i>SBC CONNECTICUT</i> expressly addressed) and, to the extent of any inconsistency between such Tariff Sections and a supplementing provision, the supplementing provision shall control. In the event that any of the foregoing Tariffs are withdrawn in whole, then the provisions applicable to <i>SBC-12STATE</i> (as well as those applicable to <i>SBC-13STATE</i>) shall apply between <i>SBC CONNECTICUT</i> and CLEC, unless the Parties otherwise agree. Nothing in this Appendix nor any other provision of the Agreement obligates <i>SBC CONNECTICUT</i> to maintain, or otherwise affects any <i>SBC CONNECTICUT</i> right to withdraw (or seek the withdrawal of), any tariff, including the foregoing Tariffs, and <i>SBC CONNECTICUT</i> fully reserves its rights with respect thereto.</p> <p>12.1.2 "Lawful ULS-ST" is sometimes used to refer to the combined offering of Lawful ULS with Lawful UST.</p> <p>12.2 Lawful UST is defined as the transmission facilities shared by more than one carrier, including the relevant <i>SBC-12STATE</i> entity, between end office switches, between end office switches and</p>		<p><i>13STATE</i> provides or continues to provide, access to shared transport (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>	

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			<p><i>tandem switches, and between tandem switches, in the relevant SBC-12STATE network.</i></p> <p>12.2.1 SBC-13STATE provides access to Lawful UST only to the extent SBC-13STATE is required to provide Lawful ULS under the Act, and then only when Lawful UST is purchased in conjunction with a Lawful ULS port and for use only as required to be permitted by the Act.</p> <p>12.2.1.1 For SBC MIDWEST REGION 5-STATE only, Lawful UST is also provided to the extent and as may also be required by the <i>Memorandum Opinion and Order in Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control</i>, 14 FCC Rcd 14712, 15023-24, App. C, ¶ 56 (1999).</p> <p>12.2.1.2 Lawful Unbundled Local Circuit Switching is provided under Section 12 of this Appendix.</p> <p>12.2.1.3 Lawful UST is provided on a per-Lawful ULS-port basis.</p> <p>12.2.1.4 Lawful UST is provided by SBC CONNECTICUT pursuant to its Connecticut Access Service Tariff. The SBC CONNECTICUT L-PIC Ability and its other IntraLATA Transmission Capabilities (as defined below) are available</p>			

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			<p><i>hereunder as part of Lawful UST, if not provided for in that Tariff.</i></p> <p>12.2.2 Lawful UST also permits, using Common Transport and Tandem Switching, for the origination from and completion to the associated Lawful ULS port of End User toll traffic where a PIC'd/LPIC'd Interexchange Carrier for that Available ULS port is not directly connected to the <u>SBC-13STATE</u> switch providing that Lawful ULS port. <u>SBC-13STATE</u> will not require use of dedicated transport or customized routing to complete calls when using Lawful ULS.</p> <p>12.2.2.1 "Common Transport" is defined as those facilities of Lawful UST that carry traffic between an end office switch where a Lawful ULS port is provided, and the tandem switch where the PIC'd/LPIC'd interexchange carrier is connected. Please see State-specific Appendix Pricing or tariff, as applicable.</p> <p>12.2.2.2 "Tandem Switching" is provided only as required as part of Lawful ULS. Please see State-specific Appendix Pricing or <u>SBC-13STATE</u> tariff, as applicable.</p> <p>12.2.3 When Lawful UST is purchased, all of CLEC's local</p>			

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			<p>traffic between SBC-13STATE switches will use Available UST, and all local CLEC's traffic to non-SBC-13STATE switches will use the transit function of Shared Transport (with this transit function being referred to as "Lawful Unbundled Shared Transport-Transit"). All interexchange traffic will be routed to the interLATA (PIC) or intraLATA toll (LPIC) Interexchange Carrier, as appropriate, selected for that Lawful ULS port.</p> <p>12.2.3.1 In the event SBC-13STATE is ordered, required, or otherwise allowed to block CLEC's transiting or other traffic originating from or terminating to a Lawful ULS port, provided with or without Lawful UST, CLEC shall pay SBC-13STATE's costs of the work performed in establishing such blocking, such costs to be calculated in accordance with the methodology applicable to Bona Fide Requests.</p> <p>12.2.4 The "Lawful Unbundled Shared Transport" rate is a blend of Lawful UST and Lawful UST Shared Transport Transit. SBC-12STATE reserves the right to seek separate rates for Lawful UST and Lawful UST Shared Transport-Transit in future negotiations to amend or replace this Agreement.</p>			

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			<p>12.2.5 <i>SBC-13STATE's ability to provide Lawful UST is limited to existing switch and transmission facilities capacities of the <u>SBC-13STATE</u> network.</i></p> <p>12.2.6 <i>In providing Lawful ULS, <u>SBC-13STATE</u> will use the existing <u>SBC-13STATE</u> routing tables contained in <u>SBC-13STATE</u> switches, as <u>SBC-13STATE</u> may change those tables from time to time including after CLEC purchases Lawful ULS, including with Lawful UST.</i></p> <p>12.2.7 <i><u>SBC-13STATE</u> will provide SS7 signaling on interswitch calls originating from a Lawful ULS port. CLEC will be charged for the use of the <u>SBC-13STATE</u> signaling on a per-call basis.</i></p> <p>12.3 <i>Where rates are distance sensitive, the mileage will be calculated on the airline distance between the A and Z locations. To determine the rate to be billed, <u>SBC-12STATE</u> will compute the mileage using the method set forth in the National Exchange Carrier Association, Inc. Tariff FCC No 4, which is based on the V & H coordinates of the A and Z locations. When the calculation results in a fraction of a mile, <u>SBC-12STATE</u> will round up to the next whole mile before determining the</i></p>			

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			<p><i>mileage and applying rates.</i></p> <p>12.4 <u>Intercarrier Compensation for Lawful ULS Traffic</u></p> <p>12.4.1 Provisions for intercompany compensation for Lawful ULS (including with Lawful UST) traffic exchanged between SBC-13STATE and CLEC are located in Appendix Intercarrier Compensation.</p> <p>12.4.2 For the purposes of compensation where CLEC utilizes SBC-13STATE's Lawful ULS(including Lawful UST), CLEC shall be solely responsible for establishing compensation arrangements(and associated charges) with third party carriers that CLEC originates traffic to and terminates traffic from including traffic carried by Lawful UST Shared Transport-Transit and traffic carried on the IntraLATA Transmission Capabilities. CLEC shall indemnify and defend SBC-13STATE against any claims and/or damages that may result from the origination and/or termination of such traffic to and/or from such third parties. SBC-13STATE may provide information regarding such traffic to other Telecommunications Carriers or entities as appropriate to resolve</p>			

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			<p><i>traffic compensation issues.</i></p> <p>12.5 <u>IntraLATA and InterLATA Toll Use</u></p> <p>12.5.1 When Lawful UST is used to make or receive interLATA (including PIC) or intraLATA (including LPIC) toll traffic and that traffic is routed through <u>SBC-12STATE</u> tandem switch(es) and transmission facilities, <u>SBC-12STATE</u> will charge usage-sensitive Common Transport and Tandem Switching Rates in addition to other applicable Lawful ULS and Lawful UST charges. However, when that traffic is routed to and/or from an Interexchange Carrier directly connected at the <u>SBC-12STATE</u> end office providing that Lawful ULS port, the Common Transport and Tandem Switching rates will not apply to such traffic.</p> <p>12.5.2 <u>SBC-12STATE</u> shall make available, upon a Lawful ULS port-specific order, the ability to route over <u>SBC-12STATE's</u> existing network "1+" intraLATA calls originating from that Lawful ULS port using Lawful UST ("L-PIC Ability") for "1+" intraLATA calls placed to points outside of <u>SBC-12STATE's</u> local calling area, but within <u>SBC-12STATE's</u> retail intraLATA toll service area. The L-</p>			

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			<p>PIC Ability will be provided from <u>SBC-12STATE's</u> originating end-office where the Lawful ULS port is being provided, and consists of use of <u>SBC-12STATE's</u> existing intraLATA interexchange transmission facilities using the same routing tables and network facilities, including interexchange trunk groups and tandem switching, as intraLATA toll calls originated from the same end-office by <u>SBC-12STATE's</u> retail end-user customers for whom <u>SBC-12STATE</u> is the presubscribed intraLATA toll carrier. The L-PIC Ability shall be made available through the use by CLEC of <u>SBC-12STATE's</u> routing code or, if the means exist and are enabled by <u>SBC-12STATE</u> to use CLEC's Carrier Identification Code (CIC) or another CLEC-specific code instead of <u>SBC-12STATE's</u> code, then using CLEC's CIC or that CLEC-specific code.</p> <p>12.5.3 <u>SBC CONNECTICUT</u> Only: <u>SBC CONNECTICUT</u> will make available, upon a ULS port-specific order, an L-PIC Ability for "1+" calls placed to points outside of SNET's local calling area, but within <u>SBC CONNECTICUT's</u> retail intraLATA toll service area. The L-PIC Ability will be provided from <u>SBC CONNECTICUT's</u> originating end-office where the ULS port is being</p>			

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			<p>provided, and consists of use of SBC CONNECTICUT's existing <i>intraLATA interexchange</i> transmission facilities using the same routing tables and network facilities, including <i>interexchange</i> trunk groups and tandem switching, as <i>intraLATA</i> toll calls originated from the same end-office by SBC CONNECTICUT's retail End Users for whom SBC CONNECTICUT is the presubscribed <i>intraLATA</i> toll carrier.</p> <p>12.5.3.1 CLEC acknowledges that "1+" calls from SBC CONNECTICUT Lawful ULS ports using the L-PIC Ability to Verizon switches in its incumbent service area may be originated and carried under the terms hereof, but that "1+" calls to other intrastate <i>interLATA</i> switches owned by other Telecommunications Carriers may not be originated or carried using the L-PIC Ability (e.g., Woodbury). Where appropriate in the context, references to "<i>intraLATA</i>" with respect to SBC CONNECTICUT shall include such use to the Verizon switches.</p> <p>12.5.3.2 SBC CONNECTICUT's L-PIC Ability shall be made available to CLEC through the use of a pseudo-Carrier Identification Code ("pseudo-CIC") assigned</p>			

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			<p><i>exclusively to CLEC. The L-PIC Ability is only available to CLEC for a ULS port with Lawful UST purchased by CLEC on which the CLEC has specifically designated the pseudo-CIC as the LPIC (after the pseudo-CIC become available for use). CLEC shall not use any other pseudo-CIC assigned to another Telecommunications Carrier or any other routing code enabled for use in <u>SBC CONNECTICUT</u>'s network. <u>SBC CONNECTICUT</u> will provide call detail to CLEC on a daily basis consistent with the then-current practices for Lawful ULS port usage.</i></p> <p><i>12.5.3.3 To be enabled to use the L-PIC Ability, CLEC shall provide a written request to <u>SBC CONNECTICUT</u>. <u>SBC CONNECTICUT</u> shall thereafter bill CLEC (and CLEC shall promptly pay to <u>SBC CONNECTICUT</u>) a one-time \$5,000.00 service charge for assigning and establishing the CLEC's exclusive pseudo-CIC in <u>SBC CONNECTICUT</u>'s systems and switches. CLEC acknowledges and agrees that this charge is non-refundable, regardless of whether and to what extent CLEC uses the L-PIC Ability. CLEC shall have no right in any pseudo-CIC except the right to use it in accordance with</i></p>			

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			<p><i>this Agreement and its permitted use of the L-PIC Ability. CLEC shall cease use of the pseudo-CIC with the termination of this Agreement, unless otherwise provided in any successor interconnection agreement. SBC CONNECTICUT reserves the right to modify or change the pseudo-CIC code used by CLEC hereunder, with such change effective thirty (30) days after written notice to CLEC of the change.</i></p> <p><i>12.5.3.3.1 The L-PIC Ability shall thereafter become available to CLEC in an estimated six (6) weeks after SBC CONNECTICUT's receipt of payment under Section 12.5.3.3. The Parties agree that in order to implement the updating of SBC CONNECTICUT's switches with CLEC's pseudo-CIC within the six weeks, CLEC will obtain and provide its Exchange Carrier Code to SBC CONNECTICUT upon the execution of this Amendment</i></p> <p><i>12.5.3.4 For intraLATA "0+" operator service calls placed from Lawful ULS ports with Lawful UST using the L-PIC Ability, which calls are not customized routed, the MOU charge in Section 1.6 shall be charged for call transport. For directory assistance calls placed from Lawful ULS ports with Lawful</i></p>			

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			<p><i>UST using the L-PIC Ability, which calls are not customized routed, and where the calling party uses "directory assistance call completion" to place an intraLATA "1+" call, the MOU charge in Section 1.6 shall be charged for call transport. Other charges for non-transport functions for such calls (e.g., OS, DA, DACC charges) shall apply as set forth in the Agreement or tariff, as applicable.</i></p> <p><i>12.5.3.5 The price charged for use of the <u>SBC CONNECTICUT</u> L-PIC Ability is \$0.012199 per Minute of Use ("MOU"). <u>SBC CONNECTICUT</u> will bill the MOUs to CLEC on a monthly basis for total MOUs on completed calls placed from <u>SBC CONNECTICUT</u> Lawful ULS ports with UST purchased by CLEC, and on which ports CLEC has specifically ordered the pseudo-CIC be used as the LPIC. CLEC acknowledges that <u>SBC CONNECTICUT's</u> charges to CLEC will be rendered using the rating as set forth in Section 20 of <u>SBC CONNECTICUT's</u> Connecticut Access Tariff. After rendering a bill to CLEC, <u>SBC CONNECTICUT</u> will make manual adjustments to the bill to reflect the per-MOU price set forth in this Section.</i></p> <p><i>12.5.4 <u>SBC-13STATE</u> shall not be</i></p>			

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			<p><i>the intraLATA toll carrier of record (retail or reseller) for any traffic carried pursuant to the L-PIC Ability or any other IntraLATA Transmission Capabilities (as defined herein). CLEC shall not charge <u>SBC-13STATE</u> for any traffic carried pursuant to the L-PIC Ability, including without limitation intercompany traffic termination charges. Any charges for terminating compensation of L-PIC Ability traffic to <u>SBC-13STATE</u> shall be subject to the Agreement's provisions regarding the termination of toll traffic.</i></p> <p><i>12.5.5 Any other use of the intraLATA interexchange transmission capabilities of Lawful UST shall be requested, and associated terms, conditions, and rates established, through the applicable bona fide request process (or its similar counterpart) for <u>SBC-13STATE</u>, unless such use is otherwise already provided for in this Agreement. As used herein, "IntraLATA Transmission Capabilities" includes the L-PIC Ability (as defined herein).</i></p> <p><i>12.5.6 Lawful UST shall not affect the routing of any traffic from a Lawful ULS port that has a third party carrier's Carrier Identification Code as such port's intraLATA toll</i></p>			

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			<p><i>provider (LPIC) (e.g., traffic subject to intraLATA presubscription will be delivered to LPIC'd interexchange carrier).</i></p> <p>12.6 <u>Application of Usage Sensitive Charges for Lawful ULS and Lawful UST</u></p> <p>12.6.1 Available ULS may include two usage sensitive components: originating Lawful ULS usage (ULS-O) and terminating Lawful ULS usage (ULS-T).</p> <p>12.6.2 SBC-12STATE will charge CLEC using SBC-12STATE's Lawful UST a usage-sensitive Blended Transport rate in addition to the originating Lawful ULS usage-sensitive rate for local interswitch calls. The Blended Transport rate is based upon a blend of direct and tandem-routed local traffic to/from either an SBC-12STATE end office or to/from a non-SBC-12STATE end office.</p> <p>12.6.3 The charges for Lawful UST are reflected in Appendix Pricing (SBC-12STATE) and Section 18 of the Connecticut Access Service Tariff for SBC CONNECTICUT.</p> <p>12.6.4 Where rates are distance sensitive, the mileage will be calculated on the airline distance involved between the locations. To</p>			

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			<p>determine the rate to be billed, SBC-12STATE will first compute the mileage using the V&H coordinates method, as set forth in the National Exchange Carrier Association, Inc. Tariff FCC No 4. When the calculation results in a fraction of a mile, SBC-12STATE will round up to the next whole mile before determining the mileage and applying rates.</p> <p>12.6.5 Intraswitch Calls - (calls originating and terminating in the same switch, i.e., the same 11- digit Common Language Location Identifier (CLLI) end office):</p> <p>12.6.5.1 Unless otherwise provided for a State as set forth in its associated and applicable Appendix Pricing, CLEC will be charged Lawful ULS-O usage charges of use for a call originating from an CLEC Lawful ULS line port or trunk port that terminates to a SBC-12STATE End User, Resale line, or any unbundled line port or trunk port which is connected to the same end office switch. SS7 Signaling will be charged, where applicable.</p> <p>12.6.5.2 CLEC will be charged Lawful ULS-O usage charges for a Centrex Line Port, where available, Lawful ULS intercom call in which CLEC's End User dials from one Centrex Line Port station to another</p>			

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			<p>Centrex-like station in the same common block defined system. SS7 Signaling will be charged, where applicable.</p> <p>12.6.5.3 SBC-12STATE will not bill Lawful ULS-T usage charges for Intraswitch calls that terminate to a CLEC-purchased Lawful ULS port.</p> <p>12.6.6 Interswitch Calls – (calls that are not intraswitch calls):</p> <p>12.6.6.1 Local Calls</p> <p>12.6.6.1.1 General Principles</p> <p>12.6.6.1.1.1 When a call originates from a CLEC-purchased Lawful ULS port with Lawful UST, CLEC will be charged Lawful ULS-O usage and SS7 signaling charges where applicable. If the call routes over Lawful UST, CLEC will pay charges for Blended Transport usage in addition to Lawful ULS-O usage charges and SS7 signaling.</p> <p>12.6.6.1.1.2 The Parties agree that SBC-12STATE will not be required to record and will not bill actual tandem switching usage for calls carried by Lawful UST that are not handed off to the separate network of a PIC/LPIC carrier. Rather, CLEC will be charged the rate shown on Appendix Pricing of Available unbundled shared transport Prices</p>			

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			<p><i>labeled "Lawful ULS Blended Transport," (or similarly labeled) for each minute of use, whether or not the call actually traverses the tandem switch.</i></p> <p><i>12.6.6.1.1.3 When a call terminates to a CLEC-purchased Lawful ULS port, CLEC will pay ULS-T usage charges.</i></p> <p><i>12.6.6.1.1.4 Illustrative Call Flows demonstrating the rate applications for Lawful ULS ports (including with Lawful UST) are set forth in the CLEC Handbook.</i></p> <p><i>12.6.6.2 <u>IntraLATA and InterLATA Toll Calls</u></i></p> <p><i>12.6.6.2.1 General Principles</i></p> <p><i>12.6.6.2.1.1 When the L-PIC Ability is not specified for use with a Lawful ULS port with Lawful UST, "1+" intraLATA calls originating from that Lawful ULS port will be routed to the CLEC's designated End User's IntraLATA Primary Interexchange Carrier (LPIC) choice. When a "1+" interLATA call originates from an Lawful ULS port with Lawful UST, it will be routed to the CLEC's designated End User's interLATA (PIC) choice.</i></p>			

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			<p>12.6.6.2.1.2 When an intraLATA or interLATA toll call originates from a CLEC Lawful ULS port with Lawful UST, SBC-12STATE will not charge originating access charges to CLEC or the IXC except that SBC-12STATE may bill the IXC for the access transport (FGD), in accordance with its access tariff, in cases where the IXC has chosen SBC-12STATE as its transport provider.</p> <p>12.6.6.2.1.3 When an intraLATA or interLATA toll call terminates to a CLEC-purchased Lawful ULS port with Lawful UST, SBC-12STATE will not charge terminating access to CLEC or the IXC except that SBC-12STATE may bill the IXC for the access transport (FGD), in accordance with its access tariff, in cases where the IXC has chosen SBC-12STATE as its transport provider.</p> <p>12.6.6.2.1.4 Illustrative Call Flows demonstrating the rate applications for Lawful ULS ports with Lawful UST are set forth in the CLEC Handbook.</p> <p>12.6.6.3 Toll Free Calls</p> <p>12.6.6.3.1 When CLEC uses Lawful ULS Ports to initiate a 1+800 (or equivalent toll free dialing NPA, e.g.,</p>			

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			888, 877 or 866) call, <u>SBC-12STATE</u> will perform the appropriate database query and route the call to the indicated IXC. CLEC will pay the Lawful ULS-O charge and SS7 transport (where applicable) per this Agreement and applicable State-specific Appendix Pricing. If any such call is routed to an <u>SBC-12STATE</u> tandem switch, <u>SBC-12STATE</u> will also charge Common Transport and Tandem Switching usage charges.			
In light of USTA II, should UNE dedicated transport be provided in this ICA?	86	Section 13 (All); 3.2; 3.2.1; 18.7- 18.7.2; 18.9 – 18.9.5; 18.11- 18.11.2	<p>13. UNE DEDICATED TRANSPORT</p> <p>13.1 Subject to the other terms and conditions of this Appendix, <u>SBC-12STATE</u> shall provide Lawful UNE Dedicated Transport under the following terms and conditions.</p> <p>13.2 For purposes of this Agreement, the following definitions apply:</p> <p>13.2.1 “Lawful UNE Dedicated Transport” is defined as <u>SBC-12STATE</u> interoffice transmission facilities connecting <u>SBC-12STATE</u> switches or wire centers within a LATA. Lawful UNE Dedicated Transport does not include transmission facilities between the <u>SBC-12STATE</u> network and the CLEC network or the location of</p>	Yes. It was part of the prior agreement. While TelCove acknowledges that the USTA II court remanded the issue to the FCC, the requirement should be part of this Agreement. The FCC's permanent UNE rules should address this issue in a definitive fashion.	<p>13. DEDICATED TRANSPORT</p> <p>13.1 As no dedicated transport constitutes Lawful UNE dedicated transport, <u>SBC-13STATE</u> is not obligated under this Section 251/252 Agreement to provide any type of dedicated transport, and CLEC shall not request dedicated transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and <u>SBC-13STATE</u> provides dedicated transport under this Agreement, <u>SBC-13STATE</u> may, at any time, even after the dedicated transport has been provided to CLEC, discontinue providing such dedicated transport (including any combination(s) including dedicated transport) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or</p>	<p>No. USTA II has vacated the unbundling requirement for both DS3s and dedicated transport, therefore TelCove is not able to order any dedicated transport on an unbundled basis, whether it is DS1s or DS3s, and whether it is one or 12 under this agreement. SBC-13STATE's position should be adopted for this issue as it is most consistent with current governing law. SBC-13STATE's Section 13, which clarifies the absence of unbundling requirements, should be adopted</p> <p>For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.</p>

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			<p>CLEC equipment.</p> <p>13.2.2 A "route" is defined as a transmission path between one of <u>SBC-12STATE</u>'s wire centers or switches and another of <u>SBC-12STATE</u>'s wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.</p> <p>13.3 <u>SBC-12STATE</u> will be responsible for the engineering, provisioning, maintenance of the underlying equipment and facilities that are used to provide Lawful UNE Dedicated Transport.</p> <p>13.3.1 <u>Lawful UNE Dedicated Transport</u>: Lawful UNE Dedicated Transport ("Lawful UDT") will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.</p> <p>13.3.2 Other than as specifically set forth elsewhere in this</p>		<p>similar concepts in other situations, the failure of <u>SBC-13STATE</u> to refuse to provide, including if <u>SBC-13STATE</u> provides or continues to provide, access to dedicated transport (whether on a stand-alone basis, in combination with UNES (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p> <p>3.2 This Section describes the connection methods under which <u>SBC-13STATE</u> agrees to provide CLECs with access to Lawful UNE Local Loops, and the conditions under which <u>SBC-13STATE</u> makes these methods available. These methods provide CLEC access to multiple <u>SBC-13STATE</u> Lawful UNES that the CLEC may then combine. The methods listed below provide CLEC with access to Lawful UNES without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.</p> <p>3.2.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine Lawful UNE Local Loops within a requested <u>SBC-13STATE</u> Central Office.</p> <p>18.7 Intentionally Left Blank</p>	

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			<p><i>Agreement, SBC CONNECTICUT does not offer Lawful UDT under this Agreement. Rather, Lawful UDT is available as described in Section 18 of the Connecticut Access Service Tariff.</i></p> <p>13.3.3 SBC-12STATE will provide Lawful UDT to a requesting CLEC only at the following speeds: DS1 (1.544 Mbps) and DS3 (44.736 Mbps),</p> <p>13.3.4 Lawful UDT includes the following elements:</p> <p>13.3.4.1 a circuit between two SBC-12STATE switches or Wire Centers within SBC-12STATE's network within the LATA.</p> <p>13.3.4.2 Multiplexing – an option ordered in conjunction with dedicated transport which converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as Lawful Unbundled Dedicated Transport.</p> <p>13.3.4.3 Other Optional features are outlined in Appendix Pricing.</p> <p>13.3.5 LAWFUL UDT “CAPS”</p> <p>13.3.5.1 CLEC may obtain a maximum of 12 unbundled dedicated DS3 circuits for any single route for which SBC-</p>		<p>18.7.1 Intentionally Left Blank</p> <p>18.7.2 Intentionally Left Blank</p> <p>18.9 The applicable cross connects for the purpose of a CLEC connecting a SBC CALIFORNIA Lawful UNE Loop to a CLEC's Collocated facility are as follows:</p> <p>18.9.1 Voice Grade/ISDN EISCC</p> <p>18.9.2 DS-0 EISCC</p> <p>18.9.3 Intentionally Left Blank</p> <p>18.9.4 Intentionally Left Blank</p> <p>18.9.5 DSL Shielded Cross Connect to Collocation</p> <p>18.11 Intentionally Left Blank</p> <p>18.11.1 Intentionally Left Blank</p> <p>18.11.2 Intentionally Left Blank</p>	

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			<p><i>12STATE</i> <i>dedicated DS3 transport is available as unbundled transport.</i><i>[47 CFR 51.319(e)(2)(iii)]</i> Accordingly, <i>SBC-12STATE</i> may reject CLEC orders for Lawful UDT DS3 circuits once CLEC has reached this capacity. Further, even if <i>SBC-12STATE</i> accepts such orders, it may, without further notice or liability, reject future orders and further provisioning of Lawful UDT DS3 circuits along the route. At <i>SBC-13STATE</i>'s option it may accept the order, but convert any Lawful UDT DS3 circuit(s) in excess of the cap at any time, and all applicable charges and non-recurring charges will apply to CLEC for such circuit(s) as of the date of provisioning.</p> <p>13.4 <i>Diversity</i></p> <p>13.4.1 When requested by CLEC, and subject to all applicable terms, conditions, and applicable charges, and only where such interoffice facilities exist at the time of CLEC request, Physical diversity shall be provided for Lawful UDT. Physical diversity means that two circuits are provisioned in such a way that no single failure of facilities or equipment will cause a failure on both circuits.</p> <p>13.4.2 <i>SBC-12STATE</i> shall provide the Physical separation</p>			

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			<p><i>between intra-office and inter-office transmission paths when technically and economically feasible. Physical diversity requested by the CLEC shall be subject to additional charges. When additional costs are incurred by SBC-12STATE for CLEC specific diversity. SBC-12STATE will advise CLEC of the applicable additional charges. SBC-12STATE will not process the request for diversity until CLEC accepts such charges. Any applicable performance measures will be abated from the time diversity is requested until CLEC accepts the additional charges.</i></p> <p>13.5 Routine Network Modifications – Lawful UDT</p> <p>13.5.1 SBC-13STATE shall make routine network modifications to Lawful UDT facilities used by requesting telecommunications carriers where the requested Lawful UDT facilities have already been constructed. SBC-13STATE shall perform routine network modifications to Lawful UDT facilities in a nondiscriminatory fashion, without regard to whether the Lawful UDT facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.</p>			

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			<p>13.5.2 A <i>routine network modification is an activity that <u>SBC-13STATE</u> regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier, and <u>SBC-13STATE</u> is not obligated to perform those activities for a requesting telecommunications carrier.</i></p> <p>13.5.3 <u>SBC-12STATE</u> shall provide <i>routine network modifications at the rates, terms and conditions set out in this Appendix (<u>SBC-12STATE</u>), and in the state specific Appendix Pricing (<u>SBC-12STATE</u>) or by tariff (<u>SBC-CONNECTICUT</u>).</i></p> <p>3.2 This Section describes the connection methods under which</p>			

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			<p>SBC-13STATE agrees to provide CLECs with access to Lawful UNE Local Loops, Lawful UNE switch ports, and Lawful UNE Dedicated Transport and the conditions under which SBC-13STATE makes these methods available. These methods provide CLEC access to multiple SBC-13STATE Lawful UNEs that the CLEC may then combine. The methods listed below provide CLEC with access to Lawful UNEs without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.</p> <p>3.2.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine Lawful UNE Local Loops, Lawful UNE Local Circuit Switching ports, and Lawful UNE Dedicated Transport within a requested SBC-13STATE Central Office.</p> <p>18.7 <i>The applicable Lawful UNE Dedicated Transport cross connects for the purpose of CLEC connecting an SBC SOUTHWEST REGION 5-STATE and SBC NEVADA Lawful UNE Dedicated Transport to a CLEC's Collocated facilities are as follows:</i></p> <p>18.7.1 <i>DS-1 to Collocation</i></p> <p>18.7.2 <i>DS-3 to Collocation</i></p>			

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			<p>18.9 The applicable cross connects for the purpose of a CLEC connecting a <u>SBC CALIFORNIA</u> Lawful UNE Loop, <i>Lawful UDT or Lawful UNE Port</i> to a CLEC's Collocated facility are as follows:</p> <p>18.9.1 Voice Grade/ISDN EISCC</p> <p>18.9.2 DS-0 EISCC</p> <p>18.9.3 DS-1 EISCC</p> <p>18.9.4 DS-3 EISCC</p> <p>18.9.5 DSL Shielded Cross Connect to Collocation</p> <p>18.11 The applicable cross connects for <u>SBC MIDWEST REGION 5-STATE</u> Lawful UDT are as follows:</p> <p>18.11.1 DS-1</p> <p>18.11.2 DS-3</p>			
In light of USTA II should TelCove be allowed to order Dark Fiber?	87	Section 14 (All)	<p>14. UNE DEDICATED TRANSPORT AND LOOP DARK FIBER</p> <p>14.1 Subject to the other terms and conditions of this Appendix, <u>SBC-12STATE</u> shall provide Lawful UNE dedicated transport dark fiber and loop dark fiber under the following terms and conditions in this subsection.</p> <p>14.2 In <u>SBC-12STATE</u>, Lawful UNE Dedicated Transport Dark Fiber</p>	Yes. It was part of the prior agreement. While TelCove acknowledges that the USTA II court remanded the issue to the FCC, the requirement should be part of this Agreement. The FCC's permanent UNE rules will likely address this issue.	<p>14. DEDICATED TRANSPORT AND LOOP DARK FIBER</p> <p>14.1 As no dark fiber dedicated transport or dark fiber loop constitutes Lawful UNE dark fiber dedicated transport or dark fiber loop, <u>SBC-13STATE</u> is not obligated under this Section 251/252 Agreement to provide any type of dark fiber dedicated transport or dark fiber loop. CLEC shall not request dark fiber dedicated transport or dark fiber loop under this Agreement, whether alone, in combination or Commingled. Accordingly,</p>	No. USTA II has vacated the unbundling rules for Dark Fiber, thereby eliminating the need for terms to be included in the ICA. As a result, TelCove's proposed language should be rejected and SBC-13STATE's Section 14, which clarifies the absence of unbundling requirements, should be adopted.

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			<p><i>and Loop Dark Fiber is deployed, unlit optical fiber within the incumbent LEC's network. Dark fiber loop is fiber within an existing fiber optic cable that has not been activated through optronics to render it capable of carrying communications services. Lawful UNE Transport Dark Fiber consists of unactivated optical interoffice transmission facilities. Other than as specifically set out elsewhere in this Agreement, <u>SBC CONNECTICUT</u> does not offer dedicated transport dark fiber or loop dark fiber under this Agreement; rather, Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber is available to CLECs as described in Section 18.2.1N of the Connecticut Service Tariff.</i></p> <p>14.3 <u>Dedicated Transport Dark Fiber</u></p> <p>14.3.1 At Lawful UNE Dedicated Transport Dark Fiber segments in routes that have not been Declassified, <u>SBC-12STATE</u> will provide a Lawful UNE Dedicated Transport Dark Fiber segment that is considered "spare" as defined in Sections 14.6 and 14.7 below. Lawful UNE Dedicated Transport Dark Fiber is defined as <u>SBC-12STATE</u> dark fiber interoffice</p>		<p>if CLEC requests and <u>SBC-13STATE</u> provides dark fiber dedicated transport or dark fiber loop under this Agreement, <u>SBC-13STATE</u> may, at any time, even after the dark fiber dedicated transport or dark fiber loop has been provided to CLEC, discontinue providing such dark fiber dedicated transport or dark fiber loop (including any combination(s) including dark fiber dedicated transport or dark fiber loop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of <u>SBC-13STATE</u> to refuse to provide, including if <u>SBC-13STATE</u> provides or continues to provide, access to dark fiber dedicated transport or dark fiber loop (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>	

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			<p><i>transmission facilities dedicated to a particular CLEC that are within <u>SBC-12STATE's</u> network, connecting <u>SBC-12STATE</u> switches or wire centers within a LATA. Lawful UNE Dedicated Transport Dark Fiber does not include transmission facilities between the <u>SBC-12STATE</u> network and the CLEC network or the location of CLEC equipment. <u>SBC-12STATE</u> will offer Lawful UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each <u>SBC-12STATE</u> CO where the requested dark fiber(s) terminate.</i></p> <p>14.4 <u>Lawful UNE Loop Dark Fiber</u></p> <p>14.4.1 At Lawful UNE Loop Dark Fiber segments in locations where Lawful UNE Loop Dark Fiber has not been Declassified, <u>SBC-12STATE</u> will provide a Lawful UNE Loop Dark Fiber segment that is considered "spare" as defined in Sections 14 .6 and 14 .7 below. Lawful UNE Loop Dark Fiber is a dedicated transmission facility between a distribution frame (or its equivalent) in a <u>SBC-12STATE</u> Central Office and the loop demarcation point at an End User premise. <u>SBC-12STATE</u> will offer Lawful UNE Loop Dark Fiber to</p>			

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			<p>CLEC when CLEC has collocation space in the <u>SBC-12STATE</u> CO where the requested dark fiber terminates.</p> <p>14.4.2 By tariff (<u>SBC CONNECTICUT</u>)</p> <p>14.5 Spare Fiber Inventory Availability and Condition</p> <p>14.5.1 All available spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber will be provided as is. No conditioning will be offered. Spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber is fiber that can be spliced in all segments, point to point but not assigned, and spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber does not include maintenance spares, fibers set aside and documented for <u>SBC-12STATE</u>'s forecasted growth, defective fibers, or fibers subscribed to by other Telecommunications Carriers. CLEC will not obtain any more than 25% of the spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber contained in the requested segment during any two-year period.</p> <p>14.6 Determining Spare Fibers</p> <p>14.6.1 <u>SBC-12STATE</u> will</p>			

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			<p><i>inventory Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fibers. Spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fibers do not include the following:</i></p> <p><i>14.6.1.1 Maintenance spares. Maintenance spares shall be kept in inventory like a working fiber. Spare maintenance fibers are assigned as follows:</i></p> <p><i>14.6.1.1.1 Cables with 24 fibers and less: two maintenance spare fibers</i></p> <p><i>14.6.1.1.2 Cables with 36 and 48 fibers: four maintenance spare fibers</i></p> <p><i>14.6.1.1.3 Cables with 72 and 96 fibers: eight maintenance spare fibers</i></p> <p><i>14.6.1.1.4 Cables with 144 fibers: twelve maintenance spare fibers</i></p> <p><i>14.6.1.1.5 Cables with 216 fibers: 18 maintenance spares</i></p> <p><i>14.6.1.1.6 Cables with 288 fibers: 24 maintenance spares</i></p> <p><i>14.6.1.1.7 Cables with 432 fibers: 36 maintenance spares</i></p> <p><i>14.6.1.1.8 Cables with 864 fibers: 72 maintenance spares.</i></p> <p><i>14.6.1.2 Defective fibers. Defective fibers, if any, will be deducted from the total number of spare Lawful</i></p>			

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			<p>UNE Dedicated Transport Dark Fiber and Loop Dark Fibers that would otherwise be available.</p> <p>14.6.1.3 <u>SBC-12STATE</u> growth fibers. Fibers documented as reserved by <u>SBC-12STATE</u> for utilization for growth within the 12 month-period following the carrier's request.</p> <p>14.6.2 The appropriate <u>SBC-12STATE</u> engineering organization will maintain records on each fiber optic cable for which CLECs request Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber.</p> <p>14.7 <u>Quantities and Time Frames for ordering Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber</u></p> <p>14.7.1 The minimum number of Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber strands that CLEC can order is one, and Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber strands must be ordered on a strand-by-strand basis. The maximum number of Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber strands that CLEC can order is no greater than 25% of the spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark</p>			

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			<p><i>Fiber in the segment requested. Should spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber fall below 8 strands in a given location, <u>SBC-12STATE</u> will provide no more than a quantity of 2 strands. (See definition of spare set forth in Sections 14.6 and 14.6 above.)</i></p> <p><i>14.7.2 If CLEC wishes to request Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber, it must submit a dark fiber facility inquiry, providing CLEC's specific point to point (A to Z) dark fiber requirements. When CLEC submits a dark fiber facility inquiry appropriate rates for the inquiry will be charged as outlined in state specific Appendix Pricing.</i></p> <p><i>14.7.2.1 If spare Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber is available, as determined under this Agreement, <u>SBC-12STATE</u> will notify CLEC and CLEC may place an Access Service Request (ASR) for the Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber.</i></p> <p><i>14.7.3 Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber will be assigned to CLEC only when an ASR is processed. ASRs will be processed on a first-come-first-served basis. Inquiry facility</i></p>			

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			<p><i>checks do not serve to reserve Lawful UNE Dedicated Transport Dark Fiber or Loop Dark Fiber. When CLEC submits the ASR, the ASR will be processed and the Lawful UNE Dedicated Transport Dark Fiber or Loop Dark Fiber facilities will be assigned. The charges which will be established as set forth in Appendix Pricing will be applied.</i></p> <p>14.8 <u>Right of Revocation of Access to Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber</u></p> <p>14.8.1 Right of revocation of access to Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber is distinguishable from Declassification as defined in Section 2.1 of this Appendix and from the situation where a Lawful UNE ceases to be a Lawful UNE, as set forth in Section 2 of this Appendix. For clarification purposes, <u>SBC-12STATE's</u> right of revocation of access under Section 14.9 applies even when the affected Lawful UNE Dedicated Transport Dark Fiber or Loop Dark Fiber remain Lawful UNE(s) subject to unbundling obligations under Section 251(c)(3) of the Act, in which case CLEC's rights to the affected network element may be</p>			

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			<p><i>revoked as provided in this Section 14.8.</i></p> <p><i>14.8.2 Should CLEC not utilize the fiber strand(s) subscribed to within the 12-month period following the date <u>SBC-12STATE</u> provided the fiber(s), <u>SBC-12STATE</u> may revoke CLEC's access to the Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber and recover those fiber facilities and return them to <u>SBC-12STATE</u> inventory.</i></p> <p><i>14.8.3 <u>SBC-12STATE</u> may reclaim from the CLEC the right to use Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber, whether or not the Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber is being utilized by CLEC, upon twelve (12) months written notice to the CLEC. <u>SBC-12STATE</u> will provide an alternative facility for the CLEC with the same bandwidth the CLEC was using prior to reclaiming the facility. <u>SBC-12STATE</u> must also demonstrate to the CLEC that the Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber will be needed to meet <u>SBC-12STATE</u>'s bandwidth requirements within the 12 months following the revocation.</i></p> <p><i>14.9 <u>Access Methods specific</u></i></p>			

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			<p><u>to Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber</u></p> <p>14.9.1 The demarcation point for Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber at Central Offices and End User premises will be in an <u>SBC-12STATE</u> approved splitter shelf. This arrangement allows for non-intrusive testing.</p> <p>14.9.2 At CO's, Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber terminates on a fiber distribution frame, or equivalent in the CO. CLEC access is provided via collocation.</p> <p><u>14.10 Installation and Maintenance for Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber</u></p> <p>14.10.1 <u>SBC-12STATE</u> will install demarcations and place the fiber jumpers from the fiber optic terminals to the demarcation point. CLEC will run its fiber jumpers from the demarcation point (1x2, 90-10 optical splitter) to the CLEC or End User equipment.</p> <p><u>14.11 Routine Network Modifications – Dedicated Transport and Loop Dark Fiber</u></p> <p>14.11.1 <u>SBC-12STATE</u> shall make routine network modifications to</p>			

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			<p><i>Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber facilities used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested Lawful UNE Dedicated Transport Dark Fiber or Loop Dark Fiber facilities have already been constructed. SBC-12STATE shall perform routine network modifications to Lawful UNE Dedicated Transport Dark Fiber and Loop Dark Fiber in a nondiscriminatory fashion, without regard to whether the Lawful UNE Dedicated Transport Dark Fiber or Loop Dark Fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.</i></p> <p><i>14.11.2 A routine network modification is an activity that SBC-12STATE regularly undertakes for its own customers. Routine network modifications do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and SBC-12STATE is not obligated to perform those activities for a requesting Telecommunications Carrier.</i></p>			

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			14.11.3 <u>SBC-12STATE</u> shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (<u>SBC-12STATE</u>), and in the state specific Appendix Pricing (<u>SBC-12STATE</u>) or by tariff (<u>SBC-CONNECTICUT</u>).			
With USTA II's decision to remove access to local switch ports, is UNE call-related database language (except for 911/E911) necessary in this ICA?	88	16.1	16.1 Access to <u>SBC-13STATE's</u> call related databases will be provided as described in the following Appendices: LIDB and CNAM-AS, LIDB and CNAM Queries, 800, 900 and E900 and Access to AIN.	Access to call related databases is necessary should the FCC remand order in USTA II determine that local switching is required.	16.1 Access to the <u>SBC-13STATE</u> 911 or E911 call related databases will be provided as described in the Lawful 911 and E911 Appendix. As no local circuit switching constitutes Lawful UNE switching, <u>SBC-13STATE</u> is not obligated to provide, and CLEC shall not request, call related databases under this Agreement (other than 911 and E911), including LIDB and CNAM-AS, LIDB and CNAM Queries, 800, or Access to AIN. CLEC access to any call related databases (other than 911 and E911) shall be pursuant to another agreement, including, where applicable, effective tariffs.	No. TRO declassified Enterprise Switching and facilities-based access to call-related databases subject to petitions for waiver, which were never pursued. Accordingly, access to call-related databases from enterprise switching and facilities-based arrangements is not required. USTA II has made clear that mass market local switching and access to the associated ports are no longer required on an unbundling basis, either. The TRO held that access to call-related databases (other than 911) as a UNE was only available when CLEC purchased the unbundled local switch port pursuant to Section 251(c)(3) of the Act (UNE ULS). Accordingly, after USTA II, these databases are no longer available with the exception of 911 or E911 services. Otherwise, no other language should be included in this ICA. SBC-13STATE's proposed language with this exception clearly identified should be adopted. Nor should this agreement be used to provide access to SBC-13STATE's call-related databases under any other section than 251 and 252 (e.g. section 271). SBC-13STATE will continue to provide access to its call-related databases per stand-alone agreements and/or access tariff at just and reasonable rates terms and conditions, but such provision of services

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						is outside the scope of sections 251/252 and, therefore, should not be addressed in this proceeding. For the foregoing reasons, SBC-13STATE's proposed USTA II language should be adopted.
Given the USTA II decision and the FCC's authority, does each state have the same authority for the establishment of UNEs under this ICA?	89	20.1	20.1 SBC-13STATE's provision of Lawful UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d) and lawful FCC and State Commission Orders or Rules . By entering into this Agreement which makes available certain Lawful UNEs, or any Amendment to this Agreement, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including but not limited each Party's right to dispute whether any elements identified in the Agreement must be provided as Lawful UNEs under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review:	20.1 The states have authority regarding the establishment of pricing for UNEs, as well as a role in Section 271 element pricing. TelCove's proposed language recognizes the role of the Commission. It is, therefore, appropriate to reference the states in this reservation of rights section.	20.1 SBC-13STATE's provision of Lawful UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). By entering into this Agreement which makes available certain Lawful UNEs, or any Amendment to this Agreement, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including but not limited each Party's right to dispute whether any elements identified in the Agreement must be provided as Lawful UNEs under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et al ("USTA I") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012	SBC-13STATE does not object to TelCove's addition of a reference to FCC rules, but TelCove's addition of a reference to State Commission Rules is improper because it seeks to require the provision of UNEs when State Commission rules (i.e. state law) requires it. Any invocation by TelCove of state law to impose additional unbundling requirements is contrary to, and preempted by, federal law on at least two grounds: (i) blanket unbundling without regard to the federal impairment standard has been repudiated by the courts and by the FCC as contrary to national policy, and (ii) USTA II emphatically holds that the FCC, not the states, is to assess impairment and achieve the balance required by the 1996 Act. The FCC's TRO expressly admonished that states may <i>not</i> "impose any unbundling framework they deem proper under state law, <i>without regard to the federal regime</i> ." TRO ¶ 192 (emphasis added). The FCC went on to say that it would be "unlikely" that any "decision pursuant to state law" that "require[d] the unbundling of a network element for which the Commission has . . . found no impairment" ever could be consistent with federal law. <i>Id</i> The FCC concluded that states are "precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in

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			the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et. al ("USTA I") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004) (USTA II); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002) and as to the FCC's Notice of Proposed Rulemaking on the topic of		(D.C. Cir. 2004) (USTA II); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002) and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including without limitation, this Appendix), SBC-13STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC	this Order." TRO ¶¶ 191-94 & nn. 610-16.

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			<p>Inter-carrier Compensation generally, issued in the Matter of Developing a Unified Inter-carrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including without limitation, this Appendix), SBC-13 STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC and State Commission rules and associated FCC, State Commission and judicial orders. If any action by any state or In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to</p>		<p>rules and associated FCC and judicial orders. If any action by any state or In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.</p>	

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			attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.			

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