

EXHIBIT C

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

ILLINOIS BELL TELEPHONE COMPANY d/b/a SBC ILLINOIS,
INDIANA BELL TELEPHONE COMPANY INCORPORATED d/b/a SBC INDIANA,
MICHIGAN BELL TELEPHONE COMPANY d/b/a SBC MICHIGAN,
NEVADA BELL TELEPHONE COMPANY d/b/a SBC NEVADA,
THE OHIO BELL TELEPHONE COMPANY d/b/a SBC OHIO,
PACIFIC BELL TELEPHONE COMPANY d/b/a SBC CALIFORNIA,
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY d/b/a SBC CONNECTICUT,
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC ARKANSAS, SBC KANSAS,
SBC MISSOURI, SBC OKLAHOMA AND/OR SBC TEXAS
AND/OR WISCONSIN BELL, INC. d/b/a SBC WISCONSIN

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**INTERCONNECTION AND/OR RESALE AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF
1996**

between one or more of

**Illinois Bell Telephone Company d/b/a SBC Illinois,
Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana,
Michigan Bell Telephone Company d/b/a SBC Michigan,
Nevada Bell Telephone Company d/b/a SBC Nevada,
The Ohio Bell Telephone Company d/b/a SBC Ohio,
Pacific Bell Telephone Company d/b/a SBC California,
The Southern New England Telephone Company d/b/a SBC
Connecticut,
Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC
Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas,
Wisconsin Bell, Inc. d/b/a SBC Wisconsin**

and

TelCove Operations, Inc. (MI, MO, OH, OK)

TelCove Investment, LLC (AR, KS)

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INTERCONNECTION AND/OR RESALE AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection and/or Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), by and between one or more of the SBC Communications Inc.-owned ILEC's Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (only to the extent that the agent for each such SBC-owned ILEC executes this Agreement for such SBC-owned ILEC and only to the extent that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and, TelCove Operations, Inc. (MI, MO, OH, OK) and TelCove Investment, LLC (AR, KS) ("CLEC"), (a Delaware corporation), shall apply to the states of Arkansas, Kansas, Michigan, Missouri, Ohio and Oklahoma.

WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential or business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities, in combination with the use of Lawful unbundled network elements purchased from SBC 13STATE or other entities, and or the resale of Telecommunications Services.

WHEREAS, the Parties want to Interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential or business End Users over their respective Telephone Exchange Service facilities in the states which are subject to this Agreement; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

WHEREAS, for purposes of this Agreement, CLEC intends to operate where one or more of Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin is the incumbent Local Exchange Carrier(s) and CLEC, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to Lawful unbundled network elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the foregoing ILEC Service areas by the appropriate State Commission(s);

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Attachments, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Capitalized Terms used in this Agreement shall have the respective meanings specified below, in Section 1.x of each Appendix attached hereto, and/or as defined elsewhere in this Agreement.

1.1 General Definitions

- 1.1.1 "**Act**" means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 1.1.2 "**Access Compensation**" is the compensation paid by one Party to the other Party for the origination/termination of intraLATA toll calls to/from its End User. Access compensation is in accordance with the LEC's **or CLECs** tariffed access rates, **as applicable**.
- 1.1.3 "**Access Service Request**" (ASR) is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.
- 1.1.4 "**Accessible Letters**" are correspondence used to communicate pertinent information regarding **SBC-13STATE** to the client/End User community.
- 1.1.5 "**Account Owner**" means a telecommunications company, including **SBC-13STATE**, that stores and/or administers Line Record Information and/or Group Record Information in a Party's LIDB and/or Calling Name Database.
- 1.1.6 "**Advanced Services**" means intrastate or interstate wireline Telecommunications Services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an **SBC-13STATE** Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include:
 - 1.1.6.1 Data services that are not primarily based on packetized technology, such as ISDN,
 - 1.1.6.2 x.25-based and x.75-based packet technologies, or
 - 1.1.6.3 Circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.
- 1.1.7 "**Affiliate**" is As Defined in the Act.
- 1.1.8 "**Alternate Billing Service**" (ABS) means a service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS calls: calling card, collect and third number billed calls.
- 1.1.9 "**Applicable Law**" means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 1.1.10 "**As Defined in the Act**" means as specifically defined by the Act.
- 1.1.11 "**As Described in the Act**" means as described in or required by the Act.
- 1.1.12 "**Automated Message Accounting**" (AMA) is a structure inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.

- 1.1.13 **"Billed Number Screening" (BNS)** means a validation of toll billing exception (TBE) data and performance of public telephone checks; i.e., determining if a billed line is a public (including those classified as semi-public) telephone number.
- 1.1.14 **"Bona Fide Request" (BFR)** is the process described in the applicable Appendix Lawful UNEs.
- 1.1.15 **"Business Day"** means Monday through Friday, excluding federal holidays and any holidays on which the applicable SBC-owned ILEC does not provision new retail services and products.
- 1.1.16 **"Busy Line Verification" (BLV)** means a service whereby an End User requests an operator to confirm the busy status of a line.
- 1.1.17 **"CABS"** means the Carrier Access Billing System.
- 1.1.18 **"Calling Card Service"** means a service that enables a calling End User to bill a telephone call to a calling card number with or without the help of an operator.
- 1.1.19 **"Calling Name Database"** means a Party's database containing current Calling Name Information, including the Calling Name Information of any telecommunications company participating in that Party's Calling Name Database. A Calling Name Database may be part of, or separate from, a LIDB.
- 1.1.20 **"Calling Name Delivery Service" (CNDS)** means a service that enables a terminating End User to identify the calling party by a displayed name before a call is answered. The calling party's name is retrieved from a Calling Name Database and delivered to the End User's premise between the first and second ring for display on compatible End User premises equipment.
- 1.1.21 **"Calling Name Information"** means a Telecommunications Carrier's records of its End Users names associated with one or more assigned ten-digit telephone numbers.
- 1.1.22 **"Calling Number Delivery"** means a feature that enables an End User to view the directory number of the calling party on a display unit.
- 1.1.23 **"Calling Party Number" (CPN)** means a Signaling System 7 "SS7" parameter whereby the ten (10) digit number of the calling Party is forwarded from the End Office.
- 1.1.24 **"Central Automatic Message Accounting (CAMA) Trunk"** means a trunk that uses Multi-Frequency (MF) signaling to transmit calls from CLEC's switch to an **SBC-13STATE** E911 Selective Router.
- 1.1.25 **"Centralized Message Distribution System" (CMDS)** means the transport system that LECs use to exchange outcollect and Carrier Access Billing System "CABS" access messages among each other and other Parties connected to CMDS.
- 1.1.26 **"Central office switch" (Central Office)** is a switching entity within the public switched telecommunications network, including but not limited to:
- 1.1.26.1 **"End Office Switch" or "End Office"** is a switching machine that **directly** terminates traffic to and receives traffic from purchasers of local exchange services. An End Office Switch does not include a PBX.
- 1.1.26.2 **"Tandem Office Switch" or "Tandem(s)"** are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 1.1.27 **"Charge Number"** is a CCS signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling party.
- 1.1.28 **"Claim"** means any pending or threatened claim, action, proceeding or suit.

- 1.1.29 **"CNAM Query"** means a Query that allows CLEC to query a Calling Name Database for Calling Name Information in order to deliver that information to CLEC's local CNDS subscribers.
- 1.1.30 **"CNAM Query Rate"** means a rate that applies to each CNAM Query received at the SCP where the Calling Name Database resides.
- 1.1.31 **"Collocation"** is an arrangement is an arrangement where a CLEC leases space at an **SBC-13STATE** premises for the placement of equipment necessary for interconnection or access to **SBC-13STATE** Lawful UNEs.
- 1.1.32 **"Commercial Mobile Radio Services" (CMRS)** means Commercial Mobile Radio Service, As Defined in the Act and FCC rules.
- 1.1.33 **"Commission"** means the applicable State agency with regulatory authority over Telecommunications. Unless the context otherwise requires, use of the term **"Commissions"** means all of the thirteen agencies listed in this Section. The following is a list of the appropriate State agencies:
- 1.1.33.1 **the Arkansas Public Service Commission (AR-PSC);**
 - 1.1.33.2 **Public Utilities Commission of the State of California (CA-PUC);**
 - 1.1.33.3 **the Connecticut Department of Public Utility Control (DPUC);**
 - 1.1.33.4 **the Illinois Commerce Commission (IL-CC);**
 - 1.1.33.5 **the Indiana Utilities Regulatory Commission (IN-URC);**
 - 1.1.33.6 **the Kansas Corporation Commission (KS-CC);**
 - 1.1.33.7 **the Michigan Public Service Commission (MI-PSC);**
 - 1.1.33.8 **the Missouri Public Service Commission (MO-PSC);**
 - 1.1.33.9 **the Public Utilities Commission of Nevada (NV-PUC);**
 - 1.1.33.10 **the Public Utilities Commission of Ohio (PUC-OH);**
 - 1.1.33.11 **the Oklahoma Corporation Commission (OK-CC);**
 - 1.1.33.12 **the Public Utility Commission of Texas (PUC-TX); and**
 - 1.1.33.13 **the Public Service Commission of Wisconsin (PSC-WI).**
- 1.1.34 **"Common Channel Signaling" (CCS)** means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 1.1.35 **"Common Language Location Identifier" (CLLI)** codes provide a unique 11-character representation of a network interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.
- 1.1.36 **"Consequential Damages"** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.
- 1.1.37 **"Customer Usage Data"** means the Telecommunications Services usage data of a CLEC End User measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by **SBC-13STATE** and forwarded to CLEC.
- 1.1.38 **"Custom Local Area Signaling Service Features" (CLASS)** means certain call-management service features that are currently available from **SBC-13STATE**'s local networks. These could

include: Automatic Call Back; Automatic Recall; Call Trace; Caller Identification and related blocking features; Calling Number Delivery; Customer Originated Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

- 1.1.39 **"Customer Name and Address Information" (CNA)** means the name, service address and telephone numbers of a Party's End Users for a particular Exchange Area. CNA includes unpublished listings, coin telephone information and published listings.
- 1.1.40 **"Data Interexchange Carrier" (DIXC)** is a process designed to facilitate the reciprocal exchange of voice traffic load data between the **SBC-13STATE** and CLECs interconnecting with its network. This reciprocal exchange of data enables **SBC-13STATE** and each CLEC to have a complete view of traffic loads on both ends of two-way trunk groups. The knowledge of call attempt and overflow data counts on both ends of a two-way trunk group enables each company to more accurately estimate the offered, and thereby better estimate, the required quantities of trunks.
- 1.1.41 **"Declassified" or "Declassification"** means the situation where a network element, including a network element referred to as a Lawful UNE under this Agreement, ceases to be a Lawful UNE under this Agreement because it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as **"Declassified."**
- 1.1.42 **"Delaying Event"** means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 1.1.42.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
 - 1.1.42.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
 - 1.1.42.3 any Force Majeure Event.
- 1.1.43 **"Dialing Parity"** is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.
- 1.1.44 **"Digital Signal Level"** is one of several transmission rates in the time-division multiplex hierarchy.
- 1.1.44.1 **"Digital Signal Level 0" (DS-0)** is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.
 - 1.1.44.2 **"Digital Signal Level 1" (DS-1)** is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.
 - 1.1.44.3 **"Digital Signal Level 3" (DS-3)** is the 44.736 Mbps third-level signal in the time-division multiplex hierarchy.
- 1.1.45 **"Digital Subscriber Line" (DSL)** is as defined in the applicable Appendix DSL and/or the applicable tariff, as appropriate.
- 1.1.46 **"Electronic File Transfer"** is any system or process that utilizes an electronic format and protocol to send or receive data files.
- 1.1.47 **"End Users"** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

- 1.1.48 **"Enhanced Service Provider" (ESP)** is a provider of enhanced services as those services are defined in 47 CFR Section 64.702.
- 1.1.49 **"Exchange Access"** is As Defined in the Act.
- 1.1.50 **"Exchange Area"** means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.1.51 **"Exchange Message Interface" (EMI)** (formerly Exchange Message Record - EMR) is the standard used for exchange of Telecommunications message information among Telecommunications Carriers for billable, non-billable, sample, settlement and study data. EMI format is contained in Telcordia Practice BR-010-200-010, CRIS Exchange Message Record.
- 1.1.52 **"Exchange Service"** means Telephone Exchange Service, As Defined in the Act.
- 1.1.53 **"Feature Group A" (FGA)** means calls either originated by, or delivered to, an End User who has purchased switched access FGA service from the interstate or intrastate tariffs of either Party. FGA also includes, but is not limited to, FGA-like services provided by either Party, where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one LATA but where the Party receiving the call is physically located in a LATA different than the LATA of the Party originating the call. The intercarrier compensation mechanism as well as additional definitions for FGA are specified in the appropriate Appendix FGA.
- 1.1.54 **"Feature Group D" (FGD)** is access available to all customers, providing trunk side access to a Party's End Office Switches with an associated uniform 101XXXX access code for customer's use in originating and terminating communications.
- 1.1.55 **"FCC"** means the Federal Communications Commission.
- 1.1.56 **"Fiber Meet"** means an Interconnection architecture method whereby the Parties physically Interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location, at which one Party's responsibility or service begins and the other Party's responsibility ends.
- 1.1.57 **"Foreign Exchange" (FX)** means a service whereby calls either originated by or delivered to a customer who has purchased FX service from the state or interstate tariffs of either Party. FX also includes, but is not limited to, FX-like services provided by either Party where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one local calling area but where the Party receiving the call is physically located outside of that local calling area. FX service can be either interLATA or intraLATA. InterLATA FX, where the originating and receiving parties are physically located in different LATAs, is considered equivalent to FGA and the intercarrier compensation mechanism is the same as FGA. IntraLATA FX, when provided by two or more local exchange carriers "LECs", is considered a jointly provided service and meet-point billed by those providing it utilizing a mutually agreed to meet-point billing, or meet-point billing like procedure.
- 1.1.58 **"Fraud Monitoring System"** means an off-line administration system that monitors suspected occurrences of ABS-related fraud.
- 1.1.59 **"Governmental Authority"** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 1.1.60 **"Group Record"** means information in LIDB and/or the LIDB administrative system that is common to all telephone numbers in an NPA-NXX or all Special Billing Numbers in an NXX-0/1XX.
- 1.1.61 **"Incumbent Local Exchange Carrier" (ILEC)** is As Defined in the Act.

- 1.1.62 **"Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.1.63 **"Integrated Digital Loop Carrier"** means a subscriber loop carrier system that is twenty-four (24) local Loop transmission paths combined into a 1.544 Mbps digital signal which integrates within the switch at a DS1 level.
- 1.1.64 **"Integrated Services Digital Network" (ISDN)** means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B+D).
- 1.1.65 **"Interconnection"** is As Defined in the Act.
- 1.1.66 **"Interconnection Activation Date"** is the date that the construction of the joint facility Interconnection arrangement has been completed, trunk groups have been established, joint trunk testing is completed and trunks have been mutually accepted by the Parties.
- 1.1.67 **"Interexchange Carrier" (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 1.1.68 **"InterLATA"** is As Defined in the Act.
- 1.1.69 **"Intermediate Distribution Frame" (IDF)** is a second frame that augments an existing Main Distribution Frame. Lines or outside cables do not terminate on the IDF.
- 1.1.70 **"Internet Service Provider" (ISP)** is an Enhanced Service Provider that provides Internet Services, and is defined in paragraph 341 of the FCC's First Report and Order in CC Docket No. 97-158.
- 1.1.71 **"IntraLATA Toll Traffic"** means the IntraLATA traffic between two locations within one LATA where one of the locations lies outside of the normal local calling area as defined by the applicable Commission.
- 1.1.72 **"Jurisdictional Identification Parameter" (JIP)** is an existing six (6) digit (NPA-NXX) field in the SS7 message. This field designates the first point of switching.
- 1.1.73 **"Lawful,"** when used in relation to unbundling, unbundled network elements, network elements and/or UNEs or activities involving UNEs, means required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.
- 1.1.74 Intentionally Left Blank
- 1.1.75 **"Line Information Data Base" (LIDB)** means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers.
- 1.1.76 Intentionally Left Blank.
- 1.1.77 Intentionally Left Blank.
- 1.1.78 **"Local Access Transport Area" (LATA)** is As Defined in the Act.
- 1.1.79 **"Local Exchange Carrier" (LEC)** is As Defined in the Act.
- 1.1.80 **"Local Exchange Routing Guide" (LERG)** is a Telcordia Reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as Network element and equipment designations.

- 1.1.81 **"Local Calls"**, for purposes of intercarrier compensation, is traffic where all calls are within the same common local and common mandatory local calling area, i.e., within the same or different SBC Exchange(s) that participate in the same common local mandatory local calling area approved by the applicable state Commission. Local Calls must actually originate and actually terminate to parties physically located within the same common local or common mandatory local calling area.
- 1.1.82 **"Local Interconnection Trunks/Trunk Groups"** are used for the termination of Local Exchange Traffic, pursuant to Telcordia Technical Reference GR-317-CORE "GR-317.
- 1.1.83 **"Local Loop Transmission"**, **"Lawful Unbundled Local Loop"**, **"Loop"** means the transmission path which extends from the Network Interface Device or demarcation point at an End User's premise to the Main Distribution Frame or other designated frame or panel in the SBC-13STATE Serving Wire Center.
- 1.1.84 **"Local Number Portability"** means the ability of users of Telecommunications Services to retain, at the same location, the presence of a previously existing telephone number(s).
- 1.1.85 **"Location Routing Number (LRN)"** is a ten (10) digit number that is assigned to the network switching elements (Central Office – Host and Remotes as required) for the routing of calls in the network. The first six (6) digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch.
- 1.1.86 **"Local Service Provider" (LSP)** is the LEC that provides retail local Exchange Service to an End User. The LSP may or may not provide any physical network components to support the provision of that End User's service.
- 1.1.87 **"Loss"** or **"Losses"** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including reasonable attorneys' fees).
- 1.1.88 **"MECAB"** refers to the Multiple Exchange Carrier Access Billing document prepared by the Billing Committee of the Ordering and Billing Forum "OBF", which functions under the auspices of the Carrier Liaison Committee "CLC of the Alliance for Telecommunications Industry Solutions "ATIS". The MECAB document, published by ATIS as ATIS/OBF- MECAB- Issue 6, February 1998, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA.
- 1.1.89 **"MECOD"** refers to the Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee of the OBF, which functions under the auspices of the CLC of ATIS. The MECOD document, published by ATIS as ATIS/OBF- MECAB- Issue 3, February 1993, establishes methods for processing orders for access service which is to be provided to an IXC by two or more telecommunications providers.
- 1.1.90 **"Meet-Point Billing" (MPB)** refers to the billing associated with interconnection of facilities between two or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 1.1.91 **"Multiple Bill/Single Tariff"** is a billing method used when Switched Exchange Access Services is jointly provided by the Parties. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates.
- 1.1.92 **"Mutual Compensation"** as defined in Appendix Reciprocal Compensation.

- 1.1.93 **"Network Data Mover" (NDM)** is an industry standard protocol for transferring information electrically.
- 1.1.94 **"Network Element"** is As Defined in the Act.
- 1.1.95 **"North American Numbering Plan" (NANP)** A numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.
- 1.1.96 **"Numbering Plan Area" (NPA)** also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.
- 1.1.97 **"Number Portability"** is As Defined in the Act.
- 1.1.98 **"NXX" or "Central Office Code"** is the three-digit switch entity indicator that is defined by the fourth through sixth digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 1.1.99 **"Ordering and Billing Forum" (OBF)** is a forum comprised of local telephone companies and inter-exchange carriers whose responsibility is to create and document Telecommunication industry guidelines and standards.
- 1.1.100 **"Originating Line Information" (OLI)** is an SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.
- 1.1.101 **"Originating Point Code" (OPC)** means a code assigned to identify CLEC's system(s) that originate SS7 messages, including LIDB Service Queries.
- 1.1.102 **"Out of Exchange LEC (OE-LEC)"** means Telcove operating within **SBC-12STATE'S** incumbent local exchange area and provides telecommunications services utilizing NPA-NXXs identified to reside in a Third Party Incumbent LEC's local exchange area.
- 1.1.103 Intentionally Left Blank .
- 1.1.104 **"Party"** means either CLEC or the SBC-owned ILEC; use of the term "Party" includes each of the SBC-owned ILEC(s) that is a party to this Agreement. **"Parties"** means both CLEC and the SBC-owned ILEC; use of the term "Parties" includes each of the SBC-owned ILEC(s) that is a party to this Agreement.
- 1.1.105 **"Permanent Number Portability" (PNP)** is a long term method of providing LNP using LRN.
- 1.1.106 **"Person"** means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 1.1.107 **"Physical Collocation"** is as defined in Appendix Physical Collocation.
- 1.1.108 **"Plain Old Telephone Service" (POTS)** means telephone service for the transmission of human speech.
- 1.1.109 **"Point of Interconnection" (POI)** is a physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties' mutual agreement.

1.1.110 "**Port**" is the point of interface/access connection to the **SBC-13STATE** public switched network. This may be a switch line side interface or switch trunk side interface.

1.1.111 "**Rate Center Area**" means the following in each applicable area:

1.1.111.1 **SBC MIDWEST REGION 5-STATE**

1.1.111.1.1 "Rate Center" means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center.

1.1.111.2 **SBC NEVADA**

1.1.111.2.1 "Rate Center" denotes the designated points, representing exchanges, (or locations outside exchange areas), between which mileage measurements are made for the application of interexchange mileage rates. Rate Centers are defined in NV-PUC tariff A6.2.7.

1.1.111.3 **SBC CALIFORNIA**

1.1.111.3.1 "Rate Center" denotes the designated points, representing exchanges or district area (or locations outside exchange areas), between which mileage measurements are made for the application of interexchange and interdistrict mileage rates, as defined by the CA-PUC.A2, 2.1.1 Definition of Terms.

1.1.111.4 **SBC CONNECTICUT**

1.1.111.4.1 "Rate Center means the specific geographic point and corresponding area that have been identified by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Exchange Services.

1.1.111.5 **SBC SOUTHWEST REGION 5-STATE**

1.1.111.5.1 "Rate Center" means an uniquely defined geographical location within an exchange area (or a location outside the exchange area) for which mileage measurements are determined for the application of interstate tariffs.

1.1.112 "**Rating Point**" means the V&H coordinates associated with a particular telephone number for rating purposes.

1.1.113 "**Referral Announcement**" refers to a process by which calls are routed to an announcement that states the new telephone number of an End User.

1.1.114 "**Routing Point**" is a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.

1.1.115 "**SBC Communications Inc.**" (**SBC**) means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone

Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

- 1.1.116 "**SBC-2STATE**" - As used herein, **SBC-2STATE** means **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in California and Nevada.
- 1.1.117 "**SBC-4STATE**" - As used herein, **SBC-4STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, and SBC Oklahoma, the applicable SBC-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.1.118 "**SBC-7STATE**" - As used herein, **SBC-7STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.1.119 "**SBC-8STATE**" - As used herein, **SBC-8STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC CALIFORNIA**, **SBC NEVADA**, and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.1.120 "**SBC-10STATE**" - As used herein, **SBC-10STATE** means **SBC SOUTHWEST REGION 5-STATE** and **SBC MIDWEST REGION 5-STATE** an the applicable SBC-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.1.121 "**SBC-12STATE**" - As used herein, **SBC-12STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE** and **SBC-2STATE** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.1.122 "**SBC-13STATE**" - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE**, **SBC-2STATE** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.1.123 "**SBC ARKANSAS**" - As used herein, **SBC ARKANSAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, the applicable SBC-owned ILEC doing business in Arkansas.
- 1.1.124 "**SBC CALIFORNIA**" - As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.1.125 "**SBC CONNECTICUT**" - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.
- 1.1.126 "**SBC KANSAS**" - As used herein, **SBC KANSAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, the applicable SBC-owned ILEC doing business in Kansas.
- 1.1.127 "**SBC ILLINOIS**" - As used herein, **SBC ILLINOIS** means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.
- 1.1.128 "**SBC INDIANA**" - As used herein, **SBC INDIANA** means Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.
- 1.1.129 "**SBC MICHIGAN**" - As used herein, **SBC MICHIGAN** means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned doing business in Michigan.
- 1.1.130 "**SBC MIDWEST REGION 5-STATE**" - As used herein, **SBC MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The

Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

- 1.1.131 "**SBC MISSOURI**" - As used herein, **SBC MISSOURI** means Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, the applicable SBC-owned ILEC doing business in Missouri.
- 1.1.132 "**SBC NEVADA**" - As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.1.133 "**SBC OHIO**" - As used herein, **SBC OHIO** means The Ohio Bell Telephone Company d/b/a SBC Ohio, the applicable SBC-owned ILEC doing business in Ohio.
- 1.1.134 "**SBC OKLAHOMA**" - As used herein, **SBC OKLAHOMA** means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, the applicable SBC-owned ILEC doing business in Oklahoma.
- 1.1.135 "**SBC SOUTHWEST REGION 5-STATE**" - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.1.136 "**SBC TEXAS**" - As used herein, **SBC TEXAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Texas, the applicable SBC-owned ILEC doing business in Texas.
- 1.1.137 "**SBC WISCONSIN**" - As used herein, **SBC WISCONSIN** means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.
- 1.1.138 "**Service Control Point**" (SCP) is the node in the common channel signaling network that accepts Queries for certain Database services. The SCP is a real time database system that receives Queries from service platforms, performs subscriber or application-specific service logic, and then sends a Response back to the Query-originating platform. Such service platforms can be Service Switching Points (SSPs) or other network nodes capable of properly formatting and launching Queries.
- 1.1.139 "**Service Management System**" (SMS) means an off-line system used to access, create, modify, or update information in a Database.
- 1.1.140 "**Service Provider Number Portability**" (SPNP) is synonymous with Permanent Number Portability "PNP".
- 1.1.141 "**Service Switching Point**" (SSP) *is a telephone central office switch equipped with a Signaling System 7 (SS7) interface.*
- 1.1.142 "Signaling System 7" (SS7) means a signaling protocol used by the CCS Network as it related to E-911/911.
- 1.1.143 Intentionally Left Blank
- 1.1.144 "**Special Billing Number**" (SBN) means a Line Record in LIDB that is based on an NXX-0/1XX numbering format. NXX-0/1XX numbering formats are similar to NPA-NXX formats except that the fourth digit of a SBN is either a zero (0) or a one (1).
- 1.1.145 "**State Abbreviation**" means the following:
- 1.1.145.1 "AR" means Arkansas
 - 1.1.145.2 "CA" means California
 - 1.1.145.3 "CT" means Connecticut
 - 1.1.145.4 "IL" means Illinois
 - 1.1.145.5 "IN" means Indiana

- 1.1.145.6 "KS" means Kansas
- 1.1.145.7 "MI" means Michigan
- 1.1.145.8 "MO" means Missouri
- 1.1.145.9 "NV" means Nevada
- 1.1.145.10 "OH" means Ohio
- 1.1.145.11 "OK" means Oklahoma
- 1.1.145.12 "TX" means Texas
- 1.1.145.13 "WI" means Wisconsin
- 1.1.146 **"Switched Access Detail Usage Data"** means a category 1101xx record as defined in the EMI Telecordia Practice BR 010-200-010.
- 1.1.147 **"Switched Exchange Access Service"** means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services.
- 1.1.148 **"Synchronous Optical Network" (SONET)** is an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps ("OC-1/STS-1") and higher rates are direct multiples of the base rate, up to 13.22 Gbps.
- 1.1.149 **"Tape Load Facility"** means data entry points at the LIDB administrative system and/or the SCPs where LIDB resides.
- 1.1.150 **"Telecommunications"** is As Defined in the Act.
- 1.1.151 **"Telecommunications Carrier"** is As Defined in the Act.
- 1.1.152 **"Telecommunications Service"** is As Defined in the Act.
- 1.1.153 **"Telephone Exchange Service"** is As Defined in the Act.
- 1.1.154 **"Telephone Toll Service"** is As Defined in the Act.
- 1.1.155 **"Third Party"** means any Person other than a Party.
- 1.1.156 **"Toll Billing Exception Service" (TBE)** means a service that allows End Users to restrict third number billing or collect calls to their lines.
- 1.1.157 Intentionally Left Blank
- 1.1.158 Intentionally Left Blank
- 1.1.159 **"Trunk"** means a communication line between two switching systems.
- 1.1.160 **"Trunk-Side"** refers to a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as connecting to another switching entity (for example another Central Office switch). Trunk-Side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.
- 1.1.161 **"Lawful Unbundled Network Element" or "Lawful UNE"** is as defined in Appendix Lawful UNEs (Lawful Provision of Access to Unbundled Network Elements).
- 1.1.162 **"Virtual Collocation"** is as defined in Appendix Virtual Collocation.
- 1.1.163 **"Wire Center"** is the location of one or more local switching systems. A point at which End User's loops within a defined geographic area converge. Such local loops may be served by one (1) or more Central Office Switches within such premises.

1.2 Definitions Applicable to **SBC-12STATE** Only

- 1.2.1 "**Main Distribution Frame**" (MDF) is termination frame for outside facility and inter-exchange office equipment at the central office for DS-0 and DSL services.
- 1.2.2 "**Serving Wire Center**" (SWC) means a Wire Center that serves the area in which the other Party's or a third party's Wire Center, aggregation point, point of termination, or point of presence is located.
- 1.2.3 "**Universal Digital Loop Carrier**" (UDLC) describes a DLC system that has a Central Office terminal channel bank that is connected to the CO switches on the analog side.

1.3 Definitions Applicable to **SBC-7STATE** Only

- 1.3.1 "**Line Side**" refers to End Office switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an ordinary subscriber's telephone station set, a PBX, answering machine, facsimile machine or computer). Line Side connections offer only those transmission and signal features appropriate for a connection between an End Office and such terminating station.

1.4 Definitions Applicable to **SBC MIDWEST REGION 5-STATE** Only

- 1.4.1 "**Line Side**" refers to the switch port toward the CLEC's side of the equipment.

2. **INTERPRETATION, CONSTRUCTION AND SEVERABILITY**

2.1 Definitions

- 2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

2.2 Headings Not Controlling

- 2.2.1 The headings and numbering of Sections, Parts, Appendices Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.
- 2.2.2 This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular appendix, attachment, exhibit, schedule or addenda may otherwise have.

2.3 Referenced Documents

- 2.3.1 Unless the context shall otherwise specifically require, and subject to Section 21, whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, **SBC-13STATE** Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement

(collectively, a "**Referenced Instrument**"), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect, and will include the then-current version or edition (including any amendments, supplements, addenda, or successors) of any other Referenced Instrument incorporated by reference therein that is in effect at the time.

2.4 References

2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

2.5 Tariff References

2.5.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to the CLEC and only the SBC13-STATE ILEC(s) that operates within that jurisdiction. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.

2.5.2 Wherever any Commission ordered tariff provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered or approved that tariff.

2.5.3 Wherever the term "customer" is used in connection with **SBC SOUTHWEST REGION 5-STATE's** retail tariffs, the term "customer" means the ultimate "consumer" or the "end user" of any tariffed service.

2.6 Conflict in Provisions

2.6.1 In the event of a conflict between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

2.6.2 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addenda. In particular, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

2.6.3 In **SBC CONNECTICUT** only, in the event of a conflict between any provision in this Agreement and any provision in the DPUC-ordered tariffs covering the services that are the subject of this Agreement with **SBC CONNECTICUT**, such DPUC-ordered tariffs will prevail.

2.7 Joint Work Product

2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

2.8 Severability

2.8.1 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this

Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Interconnection, services and Lawful Unbundled Network Elements as a total arrangement and it is intended by the Parties to be nonseverable.

2.9 Incorporation by Reference

2.9.1 The General Terms and Conditions of this Agreement, and every Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder, shall be subject to all rates, terms and conditions contained in the Appendices to this Agreement which are legitimately related to such Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service; and all such rates, terms and conditions are incorporated by reference herein and deemed a part of every Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; assurance of payment; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; hazardous substances and responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; customer inquiries; expenses; conflict of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

2.10 Non-Voluntary Provisions

2.10.1 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated by **SBC-13STATE**, but instead resulted from determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively, a "Non-Voluntary Arrangement").

2.10.2 The Parties acknowledge that the Non-Voluntary Arrangements contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Arrangement. By way of example only, the Parties acknowledge that the PUC-OH's imposition in Ohio of the Minimum Telephone Service Standards (and all terms and conditions relating thereto) shall not apply in or be "portable to" any state other than Ohio.

2.11 State-Specific Rates, Terms and Conditions

2.11.1 For ease of administration, this multistate Agreement contains certain specified rates, terms and conditions which apply only in a designated state ("**state-specific terms**"). To the extent that this Agreement contains specified rates, terms and conditions which apply only in a given state, such rates, terms and conditions shall not apply and shall have no effect in any other state(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

2.11.2 State-specific terms, as the phrase is described in Section 2.11.1 above, have been negotiated (or in the case of 2.10.2 above, included in the agreement per state requirement) by the Parties only as to the states where this Agreement has been executed, filed and approved. When the Parties negotiate an agreement for an additional state, neither Party shall be precluded by any

language in this Agreement from negotiating state-specific terms for the state in which they are to apply.

2.11.3 **Successor Rates.** Certain of the rates, prices and charges set forth in the applicable Appendix Pricing have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement, to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If, either Party refuses to execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 10.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein except for the Out of Exchange Appendix, **SBC-13STATE**'s obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which **SBC-13STATE** is then deemed to be the ILEC under the Act (the "**ILEC Territory**"), and only to the extent that the CLEC is operating and offering service to End Users identified to be residing or located in such ILEC Territory; and

2.12.1.2 assets that **SBC-13STATE** owns or leases and which are used in connection with **SBC-13STATE**'s provision to CLEC of any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "**ILEC Assets**").

2.13 Affiliates

2.13.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind **SBC-13STATE**, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between **SBC-13STATE** and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein until either **SBC-13STATE** or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supercede a currently effective interconnection agreement between any such CLEC Affiliate and **SBC-13STATE** until the expiration of such other agreement.

2.14 This Agreement sets forth the terms and conditions pursuant to which **SBC-13STATE** agrees to provide CLEC with access to Lawful UNEs, Collocation and Resale in **SBC-13STATE**'s incumbent local exchange areas for the provision of CLEC's Telecommunications Services ((Act, Section 251(c)). The Parties acknowledge and agree that **SBC-13STATE** is only obligated to make available Lawful UNEs, Collocation and Resale to CLEC in **SBC-13STATE**'s incumbent local exchange areas. **SBC-13STATE** has no obligation to provide Lawful UNEs, Collocation and Resale to CLEC for the purposes of CLEC providing and/or extending service outside of **SBC-13STATE**'s incumbent local exchange areas. In addition, **SBC-13STATE** is not obligated to provision Lawful UNEs, Collocation and Resale or provide any other rights under Section 251 (c) of the Act outside of **SBC-13STATE**'s incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Interconnection Agreement, and any associated provisions set in the Attachments, Appendices, Schedules and/or Exhibits in the CLEC's current Interconnection Agreement (including but not limited to the associated Lawful UNE, Collocation and Resale rates set forth in this Agreement), shall only

apply and be available to CLEC for provisioning services within an **SBC-13STATE** incumbent local exchange area(s) in the State in which the CLEC's Interconnection Agreement has been approved by the Commission and is in effect.

3. NOTICE OF CHANGES -- SECTION 251(c)(5)

- 3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

4. GENERAL RESPONSIBILITIES OF THE PARTIES

- 4.1 Intentionally Left Blank
- 4.2 **SBC-12STATE** and CLEC shall each use their best efforts to meet the Interconnection Activation Dates.
- 4.3 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with **SBC-13STATE**'s network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 4.4 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective designated service areas.
- 4.5 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.
- 4.6 Intentionally Left Blank
- 4.7 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law, **which minimum insurance coverage and limits may be provided for by either basis or umbrellas policies or any combination thereof, such policies to be provided to the other Party upon request.**
- 4.7.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and **Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.**
- 4.7.2 Commercial General Liability insurance with minimum limits of: **\$10,000,000 \$1,000,000** General Aggregate limit; \$500,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; **\$10,000,000 \$1,000,000** Products/Completed Operations Aggregate limit, with a **\$5,000,000 \$1,000,000** each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of **\$2,000,000 \$1,000,000** are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.

- 4.7.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 4.7.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 4.7 through 4.7.3 of this Agreement.
- 4.7.5 The Parties agree that companies affording the insurance coverage required under Section 4.7 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 4.7.6 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 4.7.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 4.7.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
- 4.7.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 4.7.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 4.7.8 This Section 4.7 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 4.8 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert the appropriate state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or Lawful Unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services on the signature page of this Agreement and provide **SBC-13STATE** with a copy.
- 4.9 Assignment
- 4.9.1 Assignment of Contract
- 4.9.1.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated third party without the prior written consent of **SBC-13STATE**. Any attempted assignment or transfer that is not permitted is void *ab initio*.
- 4.9.1.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to **SBC-13STATE**; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with **SBC-**

13STATE under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

4.9.2 Corporate Name Change and/or change in "d/b/a" only

4.9.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. **For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per end user record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update CLEC's OS/DA information to reflect the CLEC Name Change. any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.**

4.9.3 Company Code Change

4.9.3.1 Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of *this* Section 4.9.3.1, "assets" means any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide **SBC-13STATE** with ninety (90) calendar days **advance written notice** of any assignment associated with a CLEC Company Code Change and obtain **SBC-13STATE's** consent. **SBC-13STATE** shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, **SBC-13STATE's** consent to any CLEC Company Code Change is contingent upon cure of any outstanding, undisputed charges owed under this Agreement and any outstanding, undisputed charges associated with the "assets" subject to the CLEC Company Code Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.

4.9.3.2 For any CLEC Company Code Change, CLEC must submit **notice of such CLEC Company Code Change, and SBC-13STATE shall, within five (5) business days from the date such notice is submitted, change CLEC's a service order changing the OCN/ACNA for each CLEC end-user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to update its OS/DA information to reflect any new OCN/ACNA's any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, changing locks and any other work necessary with respect to Collocation, as jointly determined by the Parties on an individual case basis.**

4.9.4 Assignment of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service.

4.9.4.1 Any assignment or transfer of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement **involving more than 500 end users** without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is

a Party to this Agreement shall, ***where required by Applicable Law***, provide SBC-13STATE with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC's written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding, ***undisputed*** charges associated with any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service to be transferred. ***In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the terms of the acquiring CLEC's agreement.***

4.9.4.2 Both CLECs involved in any CLEC to CLEC Mass Migration shall comply with all Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to end users. The acquiring CLEC shall be responsible for issuing all service orders required to migrate any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder. The appropriate service order charge or administration fee (for interconnection) will apply as specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. ***In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, changing locks and any other work necessary with respect to Collocation, as determined jointly by the acquiring CLEC and SBC-13STATE on an individual case basis.***

4.9.5 Project Coordination

4.9.5.1 SBC-13STATE will provide project management support to effectuate changes of the types identified in Sections 4.9.2, 4.9.3, and 4.9.4.

4.9.5.2 SBC-13STATE will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should SBC-13STATE's most current version of LSOR or ASOR guidelines not support the required order activity, SBC-13STATE will issue service orders at the manual rate, as specified in the Appendix Pricing, Schedule of Prices to this Agreement, based upon type of service provided, and on the condition that CLEC provides to SBC-13STATE any and all information SBC-13STATE reasonably requests to effectuate such changes.

4.10 When a End User changes its service provider from SBC-13STATE to CLEC or from CLEC to SBC-13STATE and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the End User's new telephone number. ***Subject to the different administrative rules cited in each of the subsections, the bulk of these subsections should read, "Referral Announcements shall be provided by a Party to the other Party consistent with and pursuant to the referring Party's applicable End-User tariff(s), provided that if the referring Party customarily provides Referral Announcements in deviation from its applicable End-User tariff(s) when its End-User(s) change their telephone number(s), such party shall provide parity of service regarding Referral Announcements to End-User(s) of the other party.***

4.10.1 The following pertains to SBC ILLINOIS, SBC WISCONSIN and SBC CALIFORNIA only:

4.10.1.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party customarily, ***and at no additional charge***, provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated

in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

4.10.2 The following applies to **SBC INDIANA** only:

4.10.2.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(l)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, **at no additional charge**, for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

4.10.3 The following applies to **SBC MICHIGAN** only:

4.10.3.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in Michigan Administrative Rule 484.134 and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, **at no additional charge** for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

4.10.4 The following applies to **SBC OHIO** only:

4.10.4.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party customarily provides Referral Announcements, **at no additional charge** for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

- 4.11 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 4.12 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.
- 4.13 This Agreement contains comprehensive OSS terms and conditions; however, CLEC represents and covenants that it will use OSS furnished pursuant to this Agreement only for activities related to Lawful UNEs, resold services or other services covered by this Agreement, for which this Agreement contains explicit terms, conditions and rates.
- 4.14 The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties agree that they will agree subject to true up upon mutual agreement upon a rate or charge for the product or service to be provided or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

5. EFFECTIVE DATE, TERM, AND TERMINATION

- 5.1 In **SBC-13STATE**, with the exception of **SBC OHIO**, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or,

absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act. In SBC OHIO, based on the PUC-OH, the Agreement is Effective upon filing and is deemed approved by operation of law on the 91st day after filing.

- 5.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on _____, (2yrs) provided; however, should CLEC implement (i.e. **provided assurance of payment**, ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on _____, (1yr) ("Term"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 5.3 or 5.4.
- 5.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within a reasonable period of time (but in no event **less more** than forty-five (45) calendar days) after written notice thereof (**the "Cure Period"**). Any termination of this Agreement pursuant to this Section 5.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within **the Cure Period of forty-five (45) calendar days after written notice thereof provided however that if the defaulting Party has initiated cure and the default cannot be cured within forty-five (45) business days, then the defaulting Party shall be given a reasonable period to cure such breach or default.**
- 5.4 If pursuant to Section 5.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.
- 5.5 Upon termination or expiration of this Agreement in accordance with Sections 5.2, 5.3, 5.4 or 23.2:
- 5.5.1 Each Party shall continue to comply with its obligations set forth in Section 42; and
- 5.5.2 Each Party shall promptly pay all **undisputed** amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;
- 5.5.3 Each Party's confidentiality obligations shall survive; and
- 5.5.4 Each Party's indemnification obligations shall survive.
- 5.6 If either Party serves notice of expiration pursuant to Section 5.2 or Section 5.4, CLEC shall have ten (10) calendar days to provide SBC-13STATE written confirmation if CLEC wishes to pursue a successor agreement with SBC-13STATE or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with SBC-13STATE, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with SBC-13STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement. **Notwithstanding any attempted termination pursuant to Section 5.2 or 5.4, during the period of such negotiations or any arbitration of such negotiations relating to a successor agreement, the terms of this Agreement shall continue to govern the Parties' relationship.**
- 5.7 If written notice is not issued pursuant to Section 5.2, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section

252(i) of the Act; or (ii) the date that is ten (10) months after the date on which SBC-13STATE received CLEC's Section 252(a)(1) request.

- 5.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with SBC-13STATE for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following SBC-13STATE's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.9 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with SBC-13STATE in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of the SBC-owned ILEC's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.
- 5.10 In the event of termination of this Agreement pursuant to Section 5.9, SBC-13STATE and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.

6. END USER FRAUD

- 6.1 Unless caused by the gross negligence and/or intentional acts of SBC-13STATE, its employees or agents, SBC-13STATE shall not be liable to CLEC for any fraud associated with CLEC's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABS calls: calling card, collect, and third number billed calls.
- 6.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABS, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 6.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 6.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing and providing proof of the End User's permission to obtain such information.
- 6.4 SBC-10STATE, SBC CALIFORNIA, and SBC CONNECTICUT will provide notification messages to CLEC on suspected occurrences of ABS-related fraud on CLEC accounts stored in the applicable LIDB to the appropriate individual identified by the CLEC. SBC CALIFORNIA will provide such alert messages by e-mail. SBC-10STATE and SBC CONNECTICUT will provide via fax.

- 6.4.1 SBC SOUTHWEST REGION 5-STATE (on behalf of itself and SBC CONNECTICUT) and SBC CALIFORNIA will use a Fraud Monitoring System to determine suspected occurrences of ABS-related fraud for CLEC using the same criteria SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA use to monitor fraud on their respective accounts.
- 6.4.2 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.
- 6.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification information twenty-four (24) hours per day seven (7) days per week.
- 6.4.4 For each alert notification provided to CLEC, CLEC may request a corresponding thirty-day (30-day) historical report of ABS-related query processing. CLEC may request up to three reports per alert.
- 6.5 In SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA ABS-related alerts are provided to CLEC at no additional charge., except as related in 6.6 below.
- 6.6 In SBC CALIFORNIA 1+ IntraLATA toll fraud alerts are offered for Resale only under the product name Traffic Alert Referral Service (TARS). For TARS, CLEC agrees to pay a recurring usage rate as outlined in Appendix Pricing. For terms and conditions for TARS, see Appendix Resale.

7. ***[RESERVED FOR FUTURE USE.] ASSURANCE OF PAYMENT***

- 7.1 Upon request by SBC-13STATE, CLEC will provide SBC-13STATE with adequate assurance of payment of amounts due (or to become due) to SBC-13STATE.
- 7.2 Assurance of payment may be requested by SBC-12STATE if:
- 7.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC-13STATE for charges incurred as a CLEC; or
- 7.2.2 in SBC-12STATE's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or
- 7.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC-12STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.3); or
- 7.2.4 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC-12STATE's option, consist of
- 7.3.1 a cash security deposit in U.S. dollars held by SBC-12STATE ("Cash Deposit") or

- 7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to **SBC-12STATE** naming the SBC-owned ILEC(s) designated by **SBC-12STATE** as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to **SBC-12STATE** ("Letter of Credit").
- 7.3.3 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by **SBC-12STATE**, for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by **SBC-12STATE** under this Agreement.
- 7.3.3.1 Notwithstanding anything else set forth in this Agreement, **SBC SOUTHWEST REGION 5-STATE** will not request assurance of payment of charges reasonably anticipated by **SBC SOUTHWEST REGION 5-STATE** to be incurred in Arkansas in an amount that would exceed one (1) month's projected bill for CLEC's initial market entry; provided, however, that after three (3) months of operation, **SBC SOUTHWEST REGION 5-STATE** may request assurance of payment of charges reasonably anticipated by **SBC SOUTHWEST REGION 5-STATE** to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to CLEC.
- 7.3.3.2 Notwithstanding anything else set forth in this Agreement, **SBC SOUTHWEST REGION 5-STATE** will not request assurance of payment of charges reasonably anticipated by **SBC SOUTHWEST REGION 5-STATE** to be incurred in Oklahoma in an amount that would exceed two times projected average monthly billing to CLEC.
- 7.4 To the extent that **SBC-12STATE** elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 7.5 A Cash Deposit will accrue interest, however, **SBC-12STATE** will not pay interest on a Letter of Credit.
- 7.6 **SBC-12STATE** may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
 - 7.6.1 CLEC owes **SBC-12STATE** undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
 - 7.6.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
 - 7.6.3 The expiration or termination of this Agreement.
- 7.7 If **SBC-12STATE** draws on the Letter of Credit or Cash Deposit, upon request by **SBC-12STATE**, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3.
- 7.8 Notwithstanding anything else set forth in this Agreement, if **SBC-12STATE** makes a request for assurance of payment in accordance with the terms of this Section, then **SBC-12STATE** shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished **SBC-12STATE** with the assurance of payment requested; provided, however, that **SBC-12STATE** will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.

7.8.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, SBC-12STATE may also invoke the provisions set forth in Section 9.5 through Section 9.7.

7.9 The fact that a Cash Deposit or Letter of Credit is requested by SBC-12STATE shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

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

8. BILLING AND PAYMENT OF CHARGES

8.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.

8.1.1 Remittance in full of all bills rendered by SBC-10STATE and SBC CALIFORNIA is due within thirty (30) calendar days of each bill date (the "Bill Due Date"). Payment must be made in accordance with the terms set forth in Section 8.3 of this Agreement.

8.1.2 Remittance in full of all bills rendered by SBC NEVADA is due in accordance with the terms set forth in the Commission C2-A Tariff, with the date on which amounts are due referred to herein as the "Bill Due Date."

8.1.3 Remittance in full of all bills rendered by SBC CONNECTICUT is due in accordance with the terms set forth in the Connecticut Access Service Tariff approved by the DPUC, with the date on which amounts are due referred to herein as the "Bill Due Date."

8.1.4 Remittance in full of all bills rendered by CLEC is due within thirty (30) calendar days of each bill date (the "Bill Due Date").

8.1.5 If CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to SBC-12STATE as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge will be assessed as provided in Sections 8.1.5.1 through 8.1.5.3, as applicable.

8.1.5.1 If any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than the SBC SOUTHWEST REGION 5-STATE Customer Records Information System (CRIS) is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable SBC-8STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than SBC SOUTHWEST REGION 5-STATE's CRIS will comply with the process set forth in the applicable SBC-8STATE intrastate access services tariff for that state.

8.1.5.2 If any charge incurred under this Agreement that is billed out of SBC SOUTHWEST REGION 5-STATE's CRIS is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied to SBC SOUTHWEST REGION 5-STATE CRIS-billed Past Due unpaid amounts will be the

lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable **SBC SOUTHWEST REGION 5-STATE** intrastate retail tariff governing Late Payment Charges to **SBC SOUTHWEST REGION 5-STATE**'s retail End Users that are business End Users in that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of **SBC SOUTHWEST REGION 5-STATE**'s CRIS will be governed by the **SBC SOUTHWEST REGION 5-STATE** intrastate retail tariff governing Late Payment Charges to **SBC SOUTHWEST REGION 5-STATE**'s retail End Users that are business End Users in that state.

8.1.5.3 If any charge incurred under this Agreement that is billed out of any **SBC MIDWEST REGION 5-STATE** billing system is Past Due, the unpaid amounts will accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.

8.2 If **SBC-13STATE** fails to remit payment for any CLEC charges by the Bill Due Date, or if payment for any portion of the charges is received from **SBC-13STATE** after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to CLEC as of the Bill Due Date (individually and collectively, "Past Due") incurred by **SBC-13STATE** under this Agreement is Past Due, the unpaid amounts will accrue late payment charges and interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable **SBC-13STATE** intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.

8.3 CLEC shall make all payments to **SBC-12STATE** via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC-12STATE**. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and **SBC-12STATE** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by **SBC-12STATE** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **Neither Party SBC-12STATE is shall be not liable** for any delays in receipt of funds or errors in entries caused by **the other Party** CLEC or Third Parties, including CLEC's financial institutions. **Each Party shall be** CLEC is responsible for its own banking fees.

8.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.

8.3.2 CLEC must make all payments to **SBC CONNECTICUT** in "immediately available funds." All payments to **SBC CONNECTICUT** must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC CONNECTICUT**. If CLEC makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If CLEC makes payment through funds transfer via the ACH network, CLEC must use the CCD+ or the CTX transaction set. CLEC and **SBC CONNECTICUT** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each payment must be received by **SBC CONNECTICUT** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **SBC CONNECTICUT** is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.

If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Disputing Party should utilize any existing and preferred form provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts [other than disputed charges arising from Appendix InterCarrier Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.

8.4 Intentionally Left Blank

8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.

8.6 Requirements to Establish Escrow Accounts.

8.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:

8.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;

8.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and

8.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.

8.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:

8.6.2.1 The escrow account must be an interest bearing account;

8.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;

8.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;

8.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and

8.6.2.5 disbursements from the escrow account will be limited to those:

8.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or

8.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or

8.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.

8.6.3 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.

- 8.6.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.
- 8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:
- 8.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges *and interest charges* assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;
- 8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;
- 8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and
- 8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.
- 8.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 8.7.1.1 and Section 8.7.1.3 are completed within the times specified therein.
- 8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 8.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 8.9.1 Each additional copy of any bill provided for billing from **SBC SOUTHWEST REGION 5-STATE's** CABS billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.
- 8.9.2 Each additional copy of a bills provided to CLEC from **SBC SOUTHWEST REGION 5-STATE's** CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.
- 8.9.3 Each additional copy of any bill provided by CLEC to **SBC13-STATE** will incur charges at the same rate that SBC charges CLEC for duplicate bill requests as stated in Sections 8.9.1 or 8.9.2.
- 8.10 Exchange of Billing Message Information
- 8.10.1 **SBC-13STATE** will provide CLEC a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services and Lawful Unbundled Network Element usage sensitive services provided hereunder ("**Customer Usage Data**"). Such Customer Usage Data will be provided by **SBC-13STATE** in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each SBC-owned ILEC. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in

EMI format for usage sensitive services furnished in connection with each Resale Service and Lawful Unbundled Network Element to the extent that similar usage sensitive information is provided to retail End Users of **SBC-13STATE** within that state, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by **SBC-13STATE** in connection with Resale Services and Lawful Unbundled Network Elements provided by **SBC-13STATE**. Procedures and processes for implementing the interfaces with **SBC-13STATE** will be included in implementation requirements documentation.

- 8.10.2 To establish file transmission for the Daily Usage File, CLEC must provide to **SBC-13STATE** a separate written request for each state no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 8.10.3 Unless otherwise specified in Appendix Message Exchange, call detail for LEC-carried calls that are alternately billed to CLEC End Users lines provided by **SBC-13STATE** through Resale or Lawful Unbundled Network Elements will be forwarded to CLEC as rated call detail on the DUF.
- 8.10.4 **SBC SOUTHWEST REGION 5-STATE** will bill CLEC for Usage Extract furnished by **SBC SOUTHWEST REGION 5-STATE** in accordance with the price(s) provided in the applicable Appendix Pricing under "Electronic Billing Information."
- 8.10.5 Interexchange call detail on Resale Services or Lawful Unbundled Network Elements (ports) that is forwarded to **SBC-13STATE** for billing, which would otherwise be processed by **SBC-13STATE** for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services and Lawful Unbundled Network Elements (ports) will be passed through when **SBC-13STATE** records the message.
- 8.10.6 **SBC MIDWEST REGION 5-STATE** and **SBC-2STATE** Ancillary Services messages originated on or billed to a Resale Service or Lawful Unbundled Network Element (port) in those seven (7) states are subject to the rates, terms and conditions of Appendix MESSAGE EXCHANGE.
- 8.10.7 CLEC is responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

9. **NONPAYMENT AND PROCEDURES FOR DISCONNECTION**

- 9.1 If a Party is furnished Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 9.1 through 9.7, inclusive, shall be applied separately for each such state.
- 9.2 Failure to pay undisputed charges shall be grounds for disconnection of Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay any undisputed charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("**Unpaid Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
 - 9.2.1 **SBC INDIANA** will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.
 - 9.2.2 **SBC KANSAS** will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

- 9.2.3 **SBC MISSOURI** will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and
- 9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and
- 9.3.3 pay all **Disputed Amounts** [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; [and
- 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.
- 9.5 **SBC-12STATE**
- 9.5.1 If the Non-Paying Party fails *within a specific state* to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:
- 9.5.1.1 suspend *in that state* acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or
- 9.5.1.2 suspend *in that state* completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.
- 9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5.1, Section 9.5.1.1 and Section 9.5.1.2:
- 9.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

9.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

9.6 **SBC MIDWEST REGION 5-STATE** only

9.6.1 If the Non-Paying Party fails *in that state* to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.6.1.2 discontinue providing any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by **SBC INDIANA** will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.

9.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.

9.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.7 **SBC-7STATE** only

9.7.1 Any demand provided by **SBC-7STATE** to CLEC under Section 9.5.1 will further specify that upon disconnection of CLEC, **SBC-7STATE** will cause CLEC's End Users that are provisioned through Resale Services to be transferred to **SBC-7STATE** local service.

9.7.1.1 A copy of the demand provided to CLEC under Section 9.7.1 will be provided to the Commission.

9.7.2 If the Non-Paying Party fails *in that state* to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.7.2.2 disconnect any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by **SBC KANSAS** will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.7.3 On the same date that Resale Services to CLEC are disconnected, **SBC-7STATE** will transfer CLEC's End Users provisioned through Resale Services to **SBC-7STATE**'s local service. To the extent available at retail from **SBC-7STATE**, the Resale End Users transferred to **SBC-7STATE**'s local service will receive the same services that were provided through CLEC immediately prior to the time of transfer; provided, however, **SBC-7STATE** reserves the right to toll restrict (both interLATA and intraLATA) such transferred End Users.

9.7.3.1 Notwithstanding any inconsistent provisions in this Agreement, the transfer of Resale End Users to **SBC MISSOURI** will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

- 9.7.3.2 **SBC-7STATE** will inform the Commission of the names of all Resale End Users transferred through this process.
- 9.7.3.3 Conversion charges and service establishment charges for transferring Resale End Users to **SBC-7STATE** as specified in Section 9.7.3 will be billed to CLEC.
- 9.7.3.4 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of disconnection of service in compliance with Section 9.7.2. **SBC-7STATE** has no liability to CLEC or CLEC's End Users in the event of disconnection of service to CLEC and the transfer of any Resale End Users to **SBC-7STATE** local service in connection with such disconnection.
- 9.7.4 Within five (5) calendar days following the transfer, **SBC-7STATE** will notify each transferred Resale End User that because of CLEC's failure to pay **SBC-7STATE**, the End User's local service is now being provided by **SBC-7STATE**. This notice will also advise each transferred Resale End User that the End User has thirty (30) calendar days from the date of transfer to select a new Local Service Provider.
- 9.7.4.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Missouri Resale End Users will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.
- 9.7.4.1.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Kansas Resale End Users will comply with Kansas Corporation Commission Order No. 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 9.7.5 The transferred Resale End User shall be responsible for any and all charges incurred during the selection period other than those billed to CLEC under Section 9.7.3.3.
- 9.7.6 If any Resale End User transferred to **SBC-7STATE**'s local service under Section 9.7.3 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer, **SBC-7STATE** may terminate the transferred Resale End User's service.
- 9.7.6.1 **SBC-7STATE** will notify the Commission of the names of all transferred Resale End Users whose local service was terminated pursuant to Section 9.7.5.
- 9.7.6.2 Nothing in this Agreement shall be interpreted to obligate **SBC-7STATE** to continue to provide local service to any transferred Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights **SBC-7STATE** has with regard to such transferred Resale End Users under Applicable Law; provided, however,
- 9.7.6.2.1 in **SBC CALIFORNIA** only, following expiration of the selection period and disconnection of such transferred Resale End Users, where facilities permit, **SBC CALIFORNIA** will furnish transferred and subsequently disconnected local residential End Users with "quick dial tone."
- 9.8 **SBC CONNECTICUT** only
- 9.8.1 For nonpayment and procedures for disconnection for **SBC CONNECTICUT**, see the applicable DPUC ordered tariff.

10. DISPUTE RESOLUTION

10.1 Finality of Disputes

- 10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

10.1.3 Notwithstanding anything contained in this Agreement to the contrary, neither Party shall bill the other Party for previously unbilled charges that are for services rendered more than one (1) year prior to the current billing date. For any "back-billed" charges to be valid, the billing Party must separately list such charges from current charges and identify such charges as "back-billed" charges."

10.2 Alternative to Litigation

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without the need for litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

10.3.1.1 Service Center (**SBC MIDWEST REGION 5-STATE**), LSC (**SBC-7STATE**) or LEC-C (**SBC CONNECTICUT**);

10.3.1.2 Informal Dispute Resolution; and

10.3.1.3 Formal Dispute Resolution, each of which is described below.

10.4 LSC/ Service Center/LEC-C Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written notice sent to **SBC-13STATE** for Disputed Amounts must be made on the "13 Billing Claims Dispute Form".

10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center [**SBC MIDWEST REGION 5-STATE** Service Center; **SBC-7STATE** Local Service Center (LSC); **SBC CONNECTICUT** Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish **SBC-13STATE** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. **CLEC shall attempt to provide the information and evidence required by this Section within thirty (30) calendar days following the Bill Due Date; however, To be deemed a "dispute" under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.**

10.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on **SBC-13STATE**'s current billing statements thirty (30) to sixty (60) calendar days from the **Bill Due Date date of dispute** (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the

Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.

10.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 10.4.1), **SBC-13STATE** will notify CLEC of the status of the dispute and the expected resolution date.

10.4.4 Any notice of Disputed Amounts given by **SBC-13STATE** to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC-13STATE** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC-13STATE** furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify **SBC-13STATE** of the status of the dispute and the expected resolution date. ***Failure to provide the information and evidence required by this Section 10.4.4 not later than ninety (90) calendar days following the Bill Due Date shall constitute SBC-13STATE's irrevocable and full waiver of its right to dispute the subject charges.***

10.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 of this Agreement.

10.5 Informal Resolution of Disputes

10.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.3 or Section 10.4.5, each Party will appoint a knowledgeable, responsible representative relative to the issue to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

10.6 Formal Dispute Resolution

10.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 10.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3.

10.6.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 10.7 below:

10.6.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute

arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3, the Parties will annualize the actual number of months billed.

10.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 10.7 if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

10.6.4 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

10.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

10.6.4.2 Actions to compel compliance with the Dispute Resolution process.

10.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

10.7 Arbitration

10.7.1 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in the following locations: (i) if arbitration is commenced by SBC, the arbitration shall be held in Dallas, Texas (**SBC SOUTHWEST REGION 5-STATE**); Columbus, Ohio or Detroit, Michigan (**SBC MIDWEST REGION 5-STATE**), San Francisco, California (**SBC CALIFORNIA**); Reno, Nevada (**SBC NEVADA**); or Hartford, Connecticut (**SBC CONNECTICUT**), as appropriate. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction and each Party shall submit to the jurisdiction of that court for purposes of the enforcement of any award, order or judgment.

11. AUDITS – Applicable in **SBC-12STATE** only

11.1 Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the "**Auditing Party**") may audit the other Party's (the "**Audited Party**") books, records, data and other documents, as provided herein, ***no more than*** once annually, with the

audit period commencing not earlier than the date on which services were first supplied under this Agreement ("**service start date**") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. **Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.**

11.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.

11.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, **if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses *shall be paid by the Auditing Party*.** If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.

11.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of End Users of Audited Party.

11.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge ***in the first full billing cycle after the Parties have agreed upon the accuracy of the audit results***, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (depending on the SBC-owned ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

11.1.6 Except as may be otherwise provided in this Agreement, **a**Audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

11.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, ***either Party may resort to the dispute resolution procedures set forth in this Agreement.***, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.

11.2 Audits - SBC CONNECTICUT only

11.2.1 Except as provided in Appendix Compensation, SBC CONNECTICUT shall arrange for one (1) annual independent audit to be conducted by a "Big Six" independent public accounting firm or an accounting firm mutually agreed to by SBC CONNECTICUT, CLEC and all other CLECs doing business with SBC CONNECTICUT under the terms of an agreement adopted pursuant to Sections 251 and 252 of the Act for the purpose of evaluating the accuracy of SBC CONNECTICUT's billing and invoicing.

11.2.2 SBC CONNECTICUT will cooperate fully with the independent auditor in such audit and provide reasonable access to any and all appropriate SBC CONNECTICUT employees, books, records and other documents reasonably necessary to perform the audit.

11.2.3 SBC CONNECTICUT shall promptly correct any billing error that is revealed in the audit, including making refund of any overpayment to CLEC in the form of a credit on the invoice for the first full billing cycle after the audit report is issued; such refund shall include interest on the overpayment at the rate of eight percent (8%) per year. In the event that the audit reveals any underbilling and resulting underpayment to SBC CONNECTICUT by CLEC, the underpayment shall be reflected in CLEC's invoice for the first full billing cycle after the audit report is issued. SBC CONNECTICUT will not be entitled to recover interest on any underbilling to CLEC revealed by the audit for the time preceding the amount appearing on CLEC's bill from SBC CONNECTICUT, however, SBC CONNECTICUT shall be entitled to recover interest at the interest rate referenced in Section 8.1.5.1 on such underbilling and CLEC shall pay interest for the number of calendar days from the Bill Due Date of the bill on which such underbilling was rectified until the date on which payment is made and available to SBC CONNECTICUT.

12. **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

12.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, **LAWFUL** UNBUNDLED NETWORK ELEMENTS, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

13. LIMITATION OF LIABILITY

- 13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount **SBC-13STATE** or CLEC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.
- 13.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 13.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 13.3.
- 13.4 Neither CLEC nor **SBC-13STATE** shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 14 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 13.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services. Except as provided in the prior sentence, each Party ("**Indemnifying Party**") hereby releases and holds harmless the other Party ("**Indemnitee**") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 13.5 **SBC-13STATE** shall not be liable for damages to an End User's premises resulting from the furnishing of any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by **SBC-13STATE**'s gross negligence or willful misconduct. **SBC-13STATE** does not guarantee or make any warranty with respect to Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services when used in an explosive atmosphere.

- 13.6 CLEC hereby releases **SBC-13STATE** from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided by CLEC to **SBC-13STATE** under this Agreement, including any errors or omissions occurring in CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, Consequential, punitive or incidental damages unless caused by the willful misconduct or gross negligence of **SBC-13STATE**.
- 13.7 Except as may be caused by **SBC-13STATE**'s gross negligence or willful misconduct, but subject to any applicable state statutes, regulations and tariffs regarding liability for operators of 911 service, **SBC-13STATE** shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

14. INDEMNITY

- 14.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 14.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "**Indemnifying Party**") shall release, defend and indemnify the other Party (the "**Indemnified Party**") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("**Fault**") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 14.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "**Indemnifying Party**") shall defend and indemnify the other Party (the "**Indemnified Party**") against any and all such Claims or Losses by its End User regardless of whether the underlying Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 14.4 A Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party ("**Indemnified Party**") against any Claim or Loss arising from the Indemnifying Party's use of

Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services provided under this Agreement involving:

14.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.

14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement.

14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

14.4.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services; provided under this Agreement; and

14.4.1.2.2 no infringement would have occurred without such modification.

14.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

14.5 CLEC acknowledges that its right under this Agreement to Interconnect with **SBC-13STATE**'s network and to unbundle and/or combine **SBC-13STATE**'s Lawful Unbundled Network Elements (including combining with CLEC's Network Elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.

14.5.1 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), In the Matter of Petition of MCI for Declaratory Ruling.

14.5.1.1 **SBC-13STATE** agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each Lawful UNE necessary for CLEC to use such Lawful UNE in the same manner as **SBC-13STATE**.

14.5.1.2 **SBC-13STATE** shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any Lawful UNE in a different manner than used by **SBC-13STATE**.

14.5.1.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, **SBC-13STATE** shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to

SBC-13STATE under the vendor contract and the terms of the contract (excluding cost terms). **SBC-13STATE** shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.

14.5.1.4 All costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 14.5.1.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be included in the cost of providing the Lawful UNE to which the Intellectual Property rights relate.

14.5.2 **SBC-13STATE** hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Lawful Unbundled Network Elements (including combining with CLEC's Network Elements) in **SBC-13STATE**'s network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with Lawful UNEs are vendor licenses and warranties and are a part of the Intellectual Property rights **SBC-13STATE** agrees in Section 14.5.1.1 to use its best efforts to obtain.*[RESERVED FOR FUTURE USE.]*

14.5.3 **SBC-13STATE** does not and shall not indemnify, defend or *and* hold CLEC harmless for any Claims by any Third Party or End-User asserted against CLEC arising out of, relating to, or caused by **SBC-13STATE**'s failure to abide by its obligations set forth in section 14.5.1.1., nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's Interconnection with **SBC-13STATE**'s network and unbundling and/or combining **SBC-13STATE**'s Lawful Unbundled Network Elements (including combining with CLEC's Network Elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with Lawful UNEs shall be vendor's indemnities and are a part of the Intellectual Property rights **SBC-13STATE** agrees in Section 14.5.1.1 to use its best efforts to obtain. *DELIBERATELY OMMITTED*

14.6 CLEC shall reimburse **SBC-13STATE** for damages to **SBC-13STATE**'s facilities utilized to provide Interconnection or Lawful UNEs hereunder caused by the gross negligence or willful act of CLEC, its agents or subcontractors or CLEC's End User or resulting from CLEC's improper use of **SBC-13STATE**'s facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than **SBC-13STATE** utilized by CLEC in its provisioned services. Upon reimbursement for such damages, **SBC-13STATE** will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by **SBC-13STATE** for the damages to the extent of such payment.

14.7 Notwithstanding any other provision in this Agreement, each Party agrees that should it cause any non-standard digital subscriber line ("xDSL") technologies (as that term is defined in the applicable Appendix DSL and/or the applicable commission-ordered tariff, as appropriate) to be deployed or used in connection with or on **SBC-13STATE** facilities, that Party ("**Indemnifying Party**") will pay all costs associated with any damage, service interruption or other Telecommunications Service degradation, or damage to the other Party's ("**Indemnitee's**") facilities.

14.8 Indemnification Procedures

14.8.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not

relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

- 14.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 14.8.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 14.8.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 14.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 14.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 14.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 14.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 14.8.9 Each Party agrees to act in good faith and to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

15. PERFORMANCE MEASURES

- 15.1 Attachment Performance Measures provides monetary payments for failure to meet specified performance standards. The provisions of that Attachment constitute the sole obligation of **SBC-13STATE** to pay damages or financial penalties solely for failure to meet specified performance standards identified in such Attachment and all other Attachments to this Agreement.

16. INTELLECTUAL PROPERTY

- 16.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

17. NOTICES

- 17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

17.1.1 delivered personally;

17.1.2 delivered by express overnight delivery service;

17.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

17.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in sections 17.1.1, 17.1.2, or 17.1.3.

17.1.5 Notices will be deemed given as of the earliest of:

17.1.5.1 the date of actual receipt,

17.1.5.2 the next Business Day when sent via express overnight delivery service,

17.1.5.3 **seven five (5 7)** calendar days after mailing in the case of first class or certified U.S. Postal Service, or

17.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

17.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT	SBC-13STATE CONTACT
NAME/TITLE	LEC Relations Manager	Contract Management ATTN: Notices Manager
STREET ADDRESS	3100 Wilcrest Dr. Suite 200	311 S. Akard, 9 th Floor Four SBC Plaza
CITY, STATE, ZIP CODE	Houston, TX 77042	Dallas, TX 75202-5398
FACSIMILE NUMBER	713-655-7996	214-464-2006

17.1.7 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

- 17.2 **SBC-13STATE** communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

- 17.3 In the **SBC-13STATE's** Accessible Letter notification will be via electronic mail ("**e-mail**") distribution. Accessible Letter notification via e-mail will be deemed given as of the date set forth on the e-mail message.

- 17.4 In **SBC-13STATE** CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.
- 17.5 In **SBC-13STATE**, CLEC shall submit a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom CLEC requests Accessible Letter notification be sent. CLEC shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by **SBC-13STATE**. **SBC-13STATE** may, at its discretion, change the process by which the CLEC provides Accessible Letter recipient information. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 17.6 **SBC SOUTHWEST REGION 5-STATE** only:
- 17.6.1 **SBC SOUTHWEST REGION 5-STATE** shall provide a toll free facsimile number to CLEC for the submission of requests for Resale Services and Lawful Unbundled Network Elements under this Agreement; CLEC shall provide **SBC SOUTHWEST REGION 5-STATE** with a toll free facsimile number for notices from **SBC SOUTHWEST REGION 5-STATE** relating to requests for Resale Services and Lawful Unbundled Network Elements under this Agreement.

18. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

- 18.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.
- 18.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

19. NO LICENSE

- 19.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

20. CONFIDENTIALITY

- 20.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 20.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 20.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
- 20.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

- 20.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 20.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 20.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 20.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 20.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

21. INTERVENING LAW

- 21.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the 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 interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

22. GOVERNING LAW

- 22.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. *The Parties submit to personal jurisdiction in Little Rock, Arkansas; San Francisco, California; New Haven, Connecticut; Chicago, Illinois; Indianapolis, Indiana; Topeka, Kansas; Detroit, Michigan; St. Louis, Missouri; Reno, Nevada; Columbus, Ohio; Oklahoma City, Oklahoma, Dallas, Texas and Milwaukee, Wisconsin, and waive any and all objection to any such venue.*

23. REGULATORY APPROVAL

- 23.1 *The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter*

be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement as a complete package by the Commission or the FCC under Section 252 of the Act without modification.

24. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION

24.1 Applies to **SBC-12STATE** only

24.1.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. ***Blanket representations of authorizations shall be permitted in those instances where blanket authorizations are permitted by the FCC rules or applicable state regulation.*** A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge ***for the time period required by the FCC's rules or any applicable state regulation.***

24.1.2 Only an End User can initiate a challenge to a change in its LEC. If an End User notifies one Party that the End User requests local exchange service, and the other Party is such End User's LEC, then the Party receiving such request shall be free to immediately access such End User's CPNI subject to the requirements of the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End User.

24.1.3 When an End User changes or withdraws authorization from its LEC, each Party shall release End User-specific facilities belonging to the ILEC in accordance with the End User's direction or that of the End User's authorized agent. Further, when an End User abandons its premise (that is, its place of business or domicile), **SBC-12STATE** is free to reclaim the Lawful UNE facilities for use by another End User and is free to issue service orders required to reclaim such facilities.

24.1.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service (slamming) at the request of the other Party; provided, however, that each Party shall cooperate with any investigation of a complaint alleging an unauthorized change in local exchange service at the request of the FCC or the applicable state Commission.

24.2 Applies to **SBC CONNECTICUT** only

24.2.1 The Parties agree that CLEC will not submit a Local Exchange Carrier order for an End User to the Local Service Provider currently serving that End User without proper authorization from that End User, as required by the FCC in Subpart K, Part 64 rules and regulations and by the DPUC in its applicable rules and regulations. **SBC CONNECTICUT's** wholesale tariff, Section 18, further documents requirements for Local Exchange Carrier changes and required End User authorizations.

24.2.2 The Parties agree to the re-use of existing network facilities when an End User changes its provider of local exchange service and the network facilities are provided by the same network provider.

25. COMPLIANCE AND CERTIFICATION

- 25.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 25.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 25.3 Each Party shall be responsible for obtaining and keeping in effect all of their own approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 25.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

26. LAW ENFORCEMENT

- 26.1 **SBC-12 STATE** and CLEC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

- 26.1.1 Intercept Devices:

- 26.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

- 26.1.2 Subpoenas:

- 26.1.2.1 If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, in which case that Party will respond to any valid request.

- 26.1.3 Emergencies:

- 26.1.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that Receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims or Losses.

- 26.2 **SBC CONNECTICUT** and CLEC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

- 26.2.1 Each of the Parties agree to comply with the applicable state and federal law enforcement authorities, laws, and requirements, including but not limited to, the Communications Assistance for Law Enforcement Act (CALEA) and to report to applicable State and Federal law enforcement authorities as required by law, the Telecommunications Services and related information provided by each of the Parties in Connecticut.

27. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

- 27.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.
- 27.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

28. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

- 28.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

29. INTENTIONALLY LEFT BLANK.

30. SUBCONTRACTING

- 30.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 30.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 30.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 30.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 30.5 Any subcontractor that gains access to Customer Proprietary Network Information ("CPNI") or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

31. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

- 31.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.
- 31.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, **SBC-13STATE** shall, at CLEC's request, indemnify, defend, and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**, or (iii) the presence at the work location of an Environmental Hazard for which **SBC-13STATE** is responsible under Applicable Law or a Hazardous Substance introduced into the work location by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**.
- 31.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, CLEC shall, at **SBC-13STATE**'s request, indemnify, defend, and hold harmless **SBC-13STATE**, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by CLEC or any person acting on behalf of CLEC, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by CLEC or any person acting on behalf of CLEC, or (iii) the presence at the work location of an Environmental Hazard for which CLEC is responsible under Applicable Law or a Hazardous Substance introduced into the work location by CLEC or any person acting on behalf of CLEC.
- 31.4 For the purposes of this agreement, "Hazardous Substances" means i) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, ii) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or iii) asbestos and asbestos containing material in any form, and iv) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.
- 31.5 For the purposes of this agreement, "Environmental Hazard" means i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, ii) asbestos containing materials, or iii) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 31.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into i) the

work location, or ii) other environmental media, including but not limited to, the air, ground or surface water, or soil.

32. **FORCE MAJEURE**

- 32.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

33. **TAXES**

- 33.1 Each Party purchasing Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 33.2 CLEC acknowledges and agrees that as of the Effective Date it is required to comply with Chapter 283 of the Texas Local Government Code, as it may be amended from time to time, and the reporting and compensation requirements of Subchapter R of the P.U.C. Substantive Rules – Chapter 26, Applicable to Telecommunications Service Providers, as they may be amended from time to time. With respect to municipal fees charged pursuant to Chapter 283, Tex. Loc. Gov't Code, CLEC agrees that it will directly report its access lines to the Texas Public Utility Commission, will remit the related payments to municipalities, and will otherwise comply with Chapter 283 and applicable P.U.C rules, as they may be amended from time to time.
- 33.3 With respect to any purchase of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying

any Tax to the appropriate taxing authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

- 33.4 With respect to any purchase hereunder of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 33.5 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 33.6 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 33.7 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 33.8 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 33.9 With respect to any Tax or Tax controversy covered by this Section 33, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax

that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

- 33.10 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 33 shall be sent in accordance with Section 17 hereof.

34. NON-WAIVER

- 34.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

35. NETWORK MAINTENANCE AND MANAGEMENT

- 35.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.
- 35.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 35.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic, over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 35.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party, to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 35.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

35.6 Neither Party shall use any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of **CLEC or SBC-13STATE**, its **their** affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

36. SIGNALING

36.1 **SBC-13STATE** will provide SS7 signaling pursuant to applicable access tariff.

37. Intentionally Left Blank

38. CUSTOMER INQUIRIES

38.1 Except as otherwise required by Section 24.1, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

38.2 Except as otherwise required by Section 24.1, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

38.2.1 Provide the number described in Section 38.1 to callers who inquire about the other Party's services or products; and

38.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

38.3 Except as otherwise provided in this Agreement, CLEC shall be the primary point of contact for CLEC's End Users with respect to the services CLEC provides such End Users.

38.4 CLEC acknowledges that **SBC-13STATE** may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement.

39. EXPENSES

39.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.

39.2 **SBC-12STATE** and CLEC shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees, reproduction and delivery expense and any costs of notice or publication, but not including attorney's fees) associated with the filing of this Agreement or any amendment to this Agreement. Prior to the filing of this Agreement in the State of Nevada, CLEC will submit a check in the amount of \$200.00, payable to Public Utilities Commission of Nevada, to cover its portion of the expenses incurred with filing this Agreement. Prior to the filing of each and every Amendment filed in connection with this Agreement in the State of Nevada, CLEC will submit a check in the amount of \$200.00, payable to Public Utilities Commission of Nevada, to cover its portion of the expenses incurred with filing of each amendment filed in connection with this Agreement. Upon receipt of CLEC's check, the Agreement will be processed for filing with the Commission.

40. CONFLICT OF INTEREST

40.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the

other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

41. SURVIVAL

41.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 5.5; Section 5.6, Section 7.3; Section 8.1; Section 8.4; Section 8.5; Section 8.6; Section 8.7; Section 8.8; Section 10, Section 11; Section 13; Section 14; Section 15; Section 16.1; Section 18; Section 19; Section 20; Section 22; Section 25.4; Section 26.1.3; Section 32; Section 34 and Section 42.

42. SCOPE OF AGREEMENT

42.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act, and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.

42.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

43. AMENDMENTS AND MODIFICATIONS

43.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions; and such amendment will not require refunds, true-up or retroactive crediting or debiting prior to the approval of the Amendment. **SBC-12STATE** and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees, but not including attorney's fees), to the extent publication is required for filing of an amendment by a specific state.

43.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

44. APPENDICES INCORPORATED BY REFERENCE

44.1 ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)

44.1.1 **SBC-13STATE** shall provide to CLEC access to Poles, Conduits and Rights of Ways pursuant to the applicable Appendix ROW, which is/are attached hereto and incorporated herein by reference.

44.2 COLLOCATION -- SECTION 251(c)(6)

44.2.1 Collocation will be provided pursuant to the applicable Appendix Collocation, which is attached hereto and incorporated herein by reference.

44.3 Intentionally Left Blank

44.4 DIALING PARITY -- SECTION 251(b)(3)

44.4.1 The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act.

44.4.2 **SBC-13STATE** shall provide IntraLATA Dialing Parity in accordance with Section 271(e)(2) of the Act.

44.5 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)(A),(B),(C); 47 CFR § 51.305(a)(1)

44.5.1 **SBC-13STATE** shall provide to CLEC Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to the applicable Appendix ITR, which is/are attached hereto and incorporated herein by reference. Methods for Interconnection and Physical Architecture shall be as defined in the applicable Appendix NIM, which is/are attached hereto and incorporated herein by reference.

44.6 NUMBER PORTABILITY -- SECTIONS 251(b)(2)

44.6.1 The Parties shall provide to each other Permanent Number Portability (PNP) on a reciprocal basis as outlined in the applicable Appendix Number Portability, which is/are attached hereto and incorporated herein by reference.

44.7 OTHER SERVICES

44.7.1 911 and E911 Services

44.7.1.1 **SBC-13STATE** will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of the applicable Appendix 911, which is/are attached hereto and incorporated herein by reference.

44.7.1.2 The Parties agree that for "data only" providers the following rules concerning 911 requirements apply:

44.7.1.2.1 The Parties agree that CLEC will not have to establish 911 trunking or interconnection to Ameritech's 911 Selective Routers, and therefore **SBC-13STATE** shall not provide 911 services for those information service applications in which CLEC does not offer its end users the ability to place outgoing voice calls provided that; and

44.7.1.2.2 CLEC understands and agrees that, should it decide to provide voice service, it is required to meet all applicable Commission 911 service requirements; and

44.7.1.2.3 CLEC agrees to begin implementing access to 911 sufficiently in advance of the planned implementation of voice service to meet its 911 requirements. CLEC understands that the steps it must take to fulfill its 911 obligation include, but are not limited to, obtaining NXX(s) from NECA for the exchange area(s) CLEC plans to serve, submission of the appropriate form(s) to **SBC-13STATE**, and, following **SBC-13STATE**'s processing of such form(s), obtaining approval from the appropriate PSAP(s) for the CLEC's 911 service architecture. CLEC further understands that PSAP approval may include testing 911 trunks with appropriate PSAP(s). CLEC understands that, based on **SBC-13STATE**'s prior experience with CLEC implementation of 911, these steps require a minimum of sixty (60) days.

44.7.1.2.4 CLEC agrees to indemnify and hold **SBC-13STATE** harmless from the consequences of CLEC's decision to not interconnect with **SBC-13STATE**'s 911 Selective Routers. The provisions of General Terms and Conditions Section 14 shall apply to such indemnification.

44.7.3 Directory Assistance (DA)

44.7.3.1 **SBC-13STATE** will provide nondiscriminatory access to Directory Assistance services under the terms and conditions identified in the applicable Appendix DA, which **is/are** attached hereto and incorporated herein by reference.

44.7.4 Hosting

44.7.4.1 At CLEC's request, **SBC-10STATE** shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from CLEC for distribution to the appropriate billing and/or processing location or for delivery to CLEC of such data via **SBC-10STATE**'s internal network or the nationwide CMDS network pursuant to the applicable Appendix HOST, which **is/are** attached hereto and incorporated herein by reference.

44.7.5 Operator Services (OS)

44.7.5.1 **SBC-13STATE** shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in the applicable Appendix OS, which **is/are** attached hereto and incorporated herein by reference.

44.7.6 Publishing and Directory

44.7.6.1 **SBC-13STATE** will make nondiscriminatory access to Publishing and Directory service available under the terms and conditions of the applicable Appendix White Pages, which **is/are** attached hereto and incorporated herein by reference.

44.7.7 RESALE--SECTIONS 251(b)(1)

44.7.7.1 **SBC-13STATE** shall provide to CLEC Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which **is/are** attached hereto and incorporated herein by reference.

44.7.8 TRANSMISSION AND ROUTING OF SWITCHED ACCESS TRAFFIC PURSUANT TO 251(c)(2)

44.7.8.1 **SBC-13STATE** shall provide to CLEC certain trunk groups (Meet Point Trunks) under certain parameters pursuant to the applicable Appendix ITR, which **is/are** attached hereto and incorporated herein by reference.

44.7.9 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)(D); 252(d)(1) and (2); 47 CFR § 51.305(a)(5).

44.7.9.1 The applicable Appendix Compensation, which **is/are** attached hereto and incorporated herein by reference, prescribe traffic routing parameters for Local Interconnection Trunk Group(s) the Parties shall establish over the Interconnections specified in the applicable Appendix ITR, which **is/are** attached hereto and incorporated herein by reference.

44.7.10 LAWFUL UNBUNDLED NETWORK ELEMENTS -- SECTIONS 251(c)(3)

44.7.10.1 Pursuant to the applicable Appendix Lawful UNEs, which **is/are** attached hereto and incorporated herein by reference, **SBC-13STATE** will provide CLEC access to Lawful UNEs for the provision of Telecommunications Service as required by Sections 251 and 252 of the Act and in the Appendices hereto. CLEC agrees to provide access to its Network Elements to **SBC-13STATE** under the same terms, conditions and prices contained herein and in the applicable Appendices hereto.

45. **AUTHORITY**

45.1 Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the SBC-owned ILEC(s) for which this Agreement is

executed represents and warrants that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for that SBC-owned ILEC. Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

45.2 CLEC represents and warrants that it is a corporation or a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

45.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

46. COUNTERPARTS

46.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

47. ENTIRE AGREEMENT

47.1 SBC-12STATE

47.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

47.2 SBC CONNECTICUT

47.2.1 The rates, terms and conditions contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, Commission approved tariffs and other documents or instruments referred to herein and incorporated into this Agreement by reference constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties predating the execution of this Agreement; provided, however, that none of the rates, terms or conditions of this Agreement shall be construed to apply in any manner to any period prior to the termination and/or expiration date of any agreement that this Agreement replaces. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

48. SELECTION OF BILLING OPTIONS

48.1 This Agreement contains an Appendix A to the General Terms and Conditions wherein the CLEC will select certain options available under this Agreement.

SBC-13STATE Agreement
Signatures

THIS AGREEMENT CONTAINS A BINDING
ARBITRATION PROVISION WHICH MAY BE
ENFORCED BY THE PARTIES.

CLEC's STATE-SPECIFIC:

FACILITIES-BASED OCN # _____

RESALE OCN # _____

ACNA _____

Telcove Operations, Inc. (MI, MO, OK, OH)
Telcove Investment, LLC (AR, KS)

Michigan Bell Telephone Company d/b/a SBC Michigan,
The Ohio Bell Telephone Company d/b/a SBC Ohio, and
Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas,
SBC Kansas, SBC Missouri, SBC Oklahoma by SBC
Telecommunications, Inc., its authorized agent

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: *For/* Senior Vice President -
Industry Markets & Diversified Businesses

Date: _____

Date: _____

APPENDIX COORDINATED HOT CUT (CHC)

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APPENDIX COORDINATED HOT CUT (CHC)

1. INTRODUCTION

This Appendix sets forth terms and conditions for Coordinated Hot Cut (CHC) provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.

- 1.1 **SBC Communications Inc. (SBC)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.2 **SBC-13STATE** - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC MIDWEST REGION 5-STATE**, **SBC-2STATE** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.3 **SBC CALIFORNIA** - As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.
- 1.4 **SBC CONNECTICUT** - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company, the applicable above listed ILEC doing business in Connecticut.
- 1.5 **SBC MIDWEST REGION 5-STATE** - As used herein, **SBC MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.6 **SBC NEVADA** - As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.
- 1.7 **SBC SOUTHWEST REGION 5-STATE** - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.8 **"Conversion of Service"** is defined as the matching of the disconnect of one telecommunications product or service with the installation of another telecommunications product or service.
- 1.9 **"Designated Installation"** is defined as an installation of service occurring at a specific time of day as specified by CLEC.

2. CHC SERVICE DESCRIPTION

- 2.1 Coordinated Hot Cut (CHC) Service is an optional manual service offering that permits CLEC to request a designated installation and/or conversion of service during, or after, normal business hours..
- 2.2 CLEC will initiate the beginning of a CHC by contacting the appropriate coordination center. This special request enables CLEC to schedule and coordinate particular provisioning requirements with the **SBC-13STATE**.
- 2.3 **SBC-13STATE** may limit the number of service orders that can be coordinated based on workload and resources available. SBC shall approve CHC requests on a non-discriminatory basis, by requesting carrier, and on a first come, first served basis.

- 2.4 The SBC-13STATE reserves the right to suspend the availability of CHC Service during unanticipated heavy workload/activity periods. Heavy workload includes any unanticipated volume of work that impacts the SBC-13STATE's ability to provide its baseline service. Where time permits, the SBC-13STATE will make every effort to notify CLEC when such unanticipated activities occur.

3. CHC PRICING

- 3.1 CHC is a time sensitive labor operation. Total charges are determined by a number of factors including the volume of lines, day of the week, and the time of day requested for the cut over.
- 3.2 When CLEC orders CHC service, SBC-13STATE shall charge and CLEC agrees to pay for CHC service at the "additional labor" or "Time and Material" rates set forth in the following applicable Tariffs or Appendix Pricing, Schedule of Prices:
- 3.2.1 SBC MIDWEST REGION 5-STATE - FCC No. 2 Access Services Tariff, Section 13.2.6 (c)¹
- 3.2.2 SBC NEVADA - PUCN, Section C13A, 13.2.6(c)
- 3.2.3 SBC CALIFORNIA - Access Tariff 175-T, Section 13.2.6(c)
- 3.2.4 SBC SOUTHWEST REGION 5-STATE - Appendix Pricing, Schedule of Prices, "Time and Materials Charges"
- 3.2.5 SBC CONNECTICUT - Connecticut Access Service Tariff, Section 18.1(3)
- 3.3 In the event the SBC-13STATE fails to meet a CHC Service commitment for reasons within the control of SBC-13STATE, SBC will not charge CLEC a CHC Service charge. However, in the event SBC misses a CHC Service commitment due to CLEC, its agent or end user reasons, the Coordinated Hot Cut (CHC) Service charge will still apply. For example, if CLEC requests any change to an order with CHC Service including, but not limited to, SBC-13STATE's inability to gain access to CLEC's end user's premises within thirty (30) minutes of the scheduled time and SBC-13STATE requested that CLEC contact the end user, or CLEC/end user is not ready to proceed with the order within thirty (30) minutes of the scheduled time, the CHC charge will apply and SBC-13STATE is no longer obligated to ensure a CHC is on that order.

¹ SBC-13STATE will not charge the additional labor rate in a particular state in the SBC MIDWEST 5-STATE region until the effective non-recurring dockets: IL - 98-0396, IN - Cause 40611-S1, MI - U-11831, OH - 96-922-TP-UNC, and WI - 6720-TI-120, are superceded by that state's commission order approving new non-recurring Lawful UNE rates.

APPENDIX PHYSICAL COLLOCATION

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APPENDIX PHYSICAL COLLOCATION

1. INTRODUCTION

SBC-13STATE will provide Physical Collocation arrangements at the rates, terms and conditions set forth below.

1.1 Process

This Appendix provides for the placing of Collocator telecommunications equipment and facilities on **SBC-13STATE** property for the purposes set forth in Section 1.3, following.

1.2 Scope

Physical Collocation provides actual space (hereinafter referred to as Dedicated Space) within **SBC-13STATE** Eligible Structure as defined in Section 2, Definitions, following. The Collocator will lease the Dedicated Space from **SBC-13STATE** and install certain of its own telecommunications equipment within the Dedicated Space that is necessary for the purposes set forth in Section 1.3, following. **SBC-13STATE** will provide caged, shared caged, cageless, and other Physical Collocation arrangements within its Eligible Structures. When space is Legitimately Exhausted inside an Eligible Structure, **SBC-13STATE** will permit collocation in Adjacent Structures located on **SBC-13STATE's** property in accordance with this Appendix so that Collocator will have a variety of collocation options from which to choose.

1.3 Purpose

Physical Collocation is available to telecommunications carriers for the placement of telecommunications equipment as provided for in this Appendix solely for the purposes of (i) transmitting and routing Telephone Exchange service or Exchange Access pursuant to 47 U.S.C. § 251(c)(2) of the Act and the transmitting and routing of telecommunications services pursuant to applicable effective FCC regulations and judicial rulings, or (ii) obtaining access to **SBC-13STATE's** Lawful Unbundled Network Elements (Lawful UNEs) pursuant to 47 U.S.C. § 251(c)(3) of the Act and lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The terms "Telephone Exchange Service", "Exchange Access" and "Network Element" are used as defined in 47 U.S.C. § 153(47), 47 U.S.C. § 153(16), and 47 U.S.C. § 153(29) of the Act, respectively.

- 1.4 The Parties intend that this Appendix contain the sole and exclusive terms and conditions by which telecommunications carrier will obtain Physical Collocation from **SBC-13STATE** pursuant to 47 U.S.C. § 251(c)(6). Except as may be specifically permitted by this Appendix, and then only to the extent permitted, telecommunications carrier and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase Physical Collocation directly from any **SBC-13STATE** tariff, and agree not to so purchase or attempt to so purchase from any **SBC-13STATE** tariff that provides for 251(c)(6) Physical Collocation. 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 enforce the foregoing (including if **SBC-13STATE** fails to reject or otherwise block applications for, or provides or continues to provide, 251(c)(6) Physical Collocation under tariff to telecommunications carrier or any of its affiliated entities) 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, **SBC-13STATE** may either reject any application or order for 251(c)(6) Physical Collocation submitted under tariff, or without the need for any further contact with or consent from telecommunications carrier, **SBC-13STATE** may process any order for any 251(c)(6) Physical Collocation submitted under tariff, as being submitted under this Appendix and, further, may convert any 251(c)(6) Physical Collocation provided under tariff, to this Appendix, effective as of the later in time of the (i) Effective Date of this Agreement, or (ii) the submission of the order by telecommunications carrier.

2. DEFINITIONS

- 2.1 **Act** - "Act" means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 2.2 **Active Collocation Space** – Denotes the space within an Eligible Structure that can be designated for Physical Collocation which has sufficient telecommunications infrastructure systems, including power. Space within CEVs, huts and cabinets and similar Eligible Structures that can be designated for Physical Collocation is considered to be Active Collocation Space.
- 2.3 **Adjacent Off-site Arrangement** – Where Physical Collocation space within **SBC-13STATE** Eligible Structure is Legitimately Exhausted, and the Collocator's Adjacent On-site space is not within 50 ft. of the Eligible Structure's outside perimeter wall, the Collocator has the option and **SBC-13STATE** shall permit an Adjacent Structure Off-site Arrangement, to the extent technically feasible. The Adjacent Off-site Arrangement is available if the Collocator's site is located on a property that is contiguous to or within one standard city block of **SBC-13STATE**'s Central Office or Eligible Structure.
- 2.3.1 Such arrangement shall be used for interconnection or access to Lawful UNEs. When the Collocator elects to utilize an Adjacent Off-site Arrangement, the Collocator shall provide both the AC and DC power required to operate such facility. The Collocator may provide its own facilities to **SBC-13STATE**'s premises or to a mutually agreeable meet point from its Adjacent Off-site location for interconnection purposes. The Collocator may subscribe to facilities available in the UNE rate schedule of the Collocator's Agreement. The rates established in this Appendix for Adjacent Off-site Arrangement apply only if Collocator's Adjacent off-site Arrangement is located on a property that is contiguous to or within one standard city block of **SBC-13STATE**'s Central Office or Eligible Structure.
- 2.3.2 At the time the Collocator requests this arrangement, the Collocator must provide information as to the location of the Adjacent Off-site facility, the proposed method of interconnection, and the time frame needed to complete provisioning of the arrangement. **SBC-13STATE** shall provide a response to Collocator within ten (10) days of receipt of the application, including a price quote, provisioning interval, and confirmation of the manner in which the Adjacent Off-site Facility will be interconnected with **SBC-13STATE**'s facilities. **SBC-13STATE** shall make best efforts to meet the time intervals requested by Collocator and, if it cannot meet the Collocator's proposed deadline, shall provide detailed reasons, as well as proposed provisioning intervals.
- 2.3.3 In the event that interior space in an Eligible Structure becomes available, **SBC-13STATE** will provide the option to the Collocator to relocate its equipment from an Adjacent or an Adjacent Off-site Facility into the interior space. In the event the Collocator chooses to relocate its equipment into the interior space, appropriate charges applicable for collocation within the Eligible Structure will apply.
- 2.4 **Adjacent Structure** - A Collocator-provided structure placed on **SBC-13STATE** property (Adjacent On-site) or non-Company property (Adjacent Off-site) adjacent to an Eligible Structure. This arrangement is only permitted when space is legitimately exhausted inside the Eligible Structure and to the extent technically feasible. **SBC-13STATE** and telecommunications carrier will mutually agree on the location of the designated space on **SBC-13STATE** premises where the adjacent structure will be placed. **SBC-13STATE** will not unreasonably withhold agreement as to the site desired by Collocator.
- 2.5 **Augment** - A request from a Collocator to add equipment and/or cable to an existing Physical Collocation arrangement.
- 2.6 **Custom Work Charge** – Denotes the charge(s) developed solely to meet the construction requirements of the Collocator, (e.g., painting a cage). Custom work may not be charged to Collocator

for any work performed which will benefit or be used by **SBC-13STATE** or other collocators. **SBC-13STATE** also may not impose a Custom Work Charge without the Collocator's approval and agreement that the custom work is not included in the provision of collocation as provided for in the rate elements contained in this Appendix. In the event an agreement between the Collocator and **SBC-13STATE** is not reached regarding the Custom Work Charge, **SBC-13STATE** shall complete construction of the Collocator's space pending resolution of the issue by the the appropriate Commission and the Collocator may withhold payment for the disputed charges while the issue remains unresolved; however, any disputed Custom Work Charges paid by the Collocator or owed to **SBC-13STATE** shall accrue interest at the rate established by the appropriate Commission. All Custom Work Charges that are approved by the the appropriate Commission will be the basis for calculating a refund to a Collocator that has overpaid or the amount due to **SBC-13STATE** that was not paid or underpaid. These overpaid or underpaid amounts will accrue at the above-stated interest rate on a monthly basis from the date of completion of the work or the date of payment of the disputed amount, as appropriate. In the event that the requested work will benefit all or most collocators, such work shall not be considered custom work; instead, **SBC-13STATE** shall file the appropriate interconnection agreement amendment. However, **SBC-13STATE** shall not delay completion of such work during the agreement approval process. **SBC-13STATE** shall perform such work based upon provisional rates, subject to true up.

- 2.7 **Day** – For purposes of application and/or installation intervals, "day" denotes calendar days unless otherwise specified. However, any time period equal to or less than five days, day denotes business day.
- 2.8 **Dedicated Space** - Denotes the space dedicated for the Collocator's Physical Collocation arrangement located in **SBC-13STATE** Eligible Structure.
- 2.9 **Eligible Structure** - Eligible Structure refers to **SBC-13STATE**'s premises, including but not limited to Central Offices and serving wire centers, as well as all buildings or similar structures owned or leased by **SBC-13STATE** that house its network facilities, and all structures that house **SBC-13STATE**'s facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures, where technically feasible.
- 2.10 **Infrastructure Systems** - The structural components, such as floors capable of supporting equipment loads, heating, ventilating and air conditioning (HVAC) systems, electrical systems, power, high efficiency filtration, humidity controls, remote alarms, compartmentation, fire suppression systems and smoke purge.
- 2.11 **Installation Supplier** - Suppliers/vendors that are approved to perform central office installation work for SBC and for CLEC in SBC Eligible Structures in all collocation footprints areas and/or SBC common areas in the technologies and geographical locations for which they are approved SBC.
- 2.12 **Legitimately Exhausted** – Denotes when all space in a Central Office (CO) or other Eligible Structure that can be used to locate telecommunications equipment in any of the methods of collocation available under this Appendix is exhausted or completely occupied. Before **SBC-13STATE** may make a determination that space in an Eligible Structure is legitimately exhausted, **SBC-13STATE** must have removed all unused obsolete equipment from the Eligible Structure and made such space available for collocation; however, removal of the equipment shall not cause a delay in **SBC-13STATE**'s response to a Collocator's application or in provisioning collocation arrangements. The determination of exhaustion is subject to dispute resolution as provided in Section 6.2 of this Appendix. In making this determination, **SBC-13STATE** may reserve space for transport equipment for current year plus two years. Additionally, **SBC-13STATE** may not reserve space for equipment for itself, or advanced or interLATA services affiliates or other affiliates of **SBC-13STATE** or for future use by **SBC-13STATE** or its affiliates under conditions that are more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own use. **SBC-13STATE** may reserve space for

Switching, Power, Main Distribution Frame (MDF), and Digital Crossconnect System (DCS) up to anticipated customer growth over a 10-year life expectancy of the ultimate footprint of the equipment.

- 2.13 **Other (Inactive) Collocation Space** - Denotes the space within the Central Office that can be designated for Physical Collocation where infrastructure systems do not currently exist and must be constructed. The designation of Other (Inactive) Collocation Space is applicable to space within Central Offices only; other Eligible Structures such as CEVs, Huts, and Vaults are considered Active Collocation Space for purposes of this Appendix.
- 2.14 **Preparation Charges** - Denotes those charges associated with the initial preparation of the Collocator's Dedicated Space.
- 2.15 **Technically Feasible** - A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. A rebuttable presumption that a collocation arrangement is technically feasible shall arise if the arrangement has been deployed by any incumbent local exchange carrier in the country.
- 2.16 **Telecommunications Infrastructure Space** - Denotes the square footage or linear footage of space, including common areas, used to house telecommunications infrastructure equipment necessary to support collocation space used for interconnection with or access to Lawful UNEs of **SBC-13STATE**'s network.

3. **LIMITATION OF LIABILITY AND FORCE MAJEURE EVENTS**

3.1 **Limitation of Liability**

- 3.1.1 With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring either in the course of furnishing service pursuant to the Agreement, the liability of either **SBC-13STATE** or the Collocator, if any, shall not exceed an amount equivalent to the proportionate monthly charge to the Collocator for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues.
- 3.1.2 Neither **SBC-13STATE** nor the Collocator shall be responsible to the other for any indirect, special, consequential, lost profit, exemplary or punitive damages, whether in contract or tort.
- 3.1.3 Both **SBC-13STATE** and the Collocator shall be indemnified and held harmless by the other against claims and damages by any third Party arising from provision of the other ones' services or equipment except those claims and damages directly associated with the provision of services to each other which are governed by the provisioning Party's applicable agreements and/or tariffs.
- 3.1.4 The liability of either **SBC-13STATE** or the Collocator for its willful misconduct or gross negligence is not limited by this Appendix.

3.2 **Third Parties**

- 3.2.1 **SBC-13STATE** also may provide space in or access to the Eligible Structure to other persons or entities ("Others"), which may include competitors of the Collocator's; that such space may be close to the Dedicated Space, possibly including space adjacent to the Dedicated Space and/or with access to the outside of the Dedicated Space within the collocation area; and that if caged, the cage around the Dedicated Space is a permeable boundary that will not prevent the Others from observing or even damaging the Collocator's equipment and facilities.
- 3.2.2 In addition to any other applicable limitation, neither **SBC-13STATE** nor the Collocator shall have any liability with respect to any act or omission by any Other, regardless of the degree of culpability of any Other, except in instances involving gross negligence or willful actions by either **SBC-13STATE** or the Collocator or its agents or employees.

3.3 Force Majeure Events

- 3.3.1 **SBC-13STATE** shall not be responsible for delays or failures in performance under this Appendix resulting from acts or occurrences beyond the reasonable control of **SBC-13STATE** including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any government or legal body, embargoes, epidemics, terrorists acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbance or the inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers.

4. RESPONSIBILITIES OF **SBC-13STATE**

4.1 Right to Use; Multiple Dedicated Spaces

- 4.1.1 In accordance with this Appendix, **SBC-13STATE** grants to the Collocator the right to use a Dedicated Space. Each Dedicated Space within an Eligible Structure will be considered a single Dedicated Space for the application of rates according to this Appendix.

4.2 Contact Numbers

- 4.2.1 **SBC-13STATE** is responsible for providing the Collocator personnel a contact number for **SBC-13STATE** technical personnel who are readily accessible twenty-four (24) hours a day, seven (7) days a week. In addition, for all activities requiring verbal and written notification per this Appendix, the Parties will provide the contact numbers included in the application process. Notwithstanding the requirements for contact numbers, the Collocator will have access to its collocated equipment in the Eligible Structure twenty-four (24) hours a day, seven (7) days a week and **SBC-13STATE** will not delay a Collocator's entry into an Eligible Structure.

4.3 Trouble Status Reports

- 4.3.1 **SBC-13STATE** is responsible for making best efforts to provide prompt verbal notification to the Collocator of significant outages or operations problems which could impact or degrade the Collocator's network, switches or services, with an estimated clearing time for restoral. In addition, **SBC-13STATE** will provide written notification within twenty-four (24) hours. When trouble has been identified, **SBC-13STATE** is responsible for providing trouble status reports, consistent with Section 5.3 of this Appendix, when requested by the Collocator.

4.4 Service Coordination

- 4.4.1 **SBC-13STATE** is responsible for coordinating with the Collocator to ensure that services are installed in accordance with the service request.

4.5 Casualty Loss

4.5.1 Damage to Dedicated Space

- 4.5.1.1 If the Dedicated Space is damaged by fire or other casualty that is not the result of the Collocator's actions, and (1) the Dedicated Space is not rendered untenable in whole or in part, **SBC-13STATE** shall repair the same at its expense (as hereafter limited) and the monthly charge shall not be abated, or (2) the Dedicated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) business days, **SBC-13STATE** has the option to repair the Dedicated Space at its expense (as hereafter limited) and the monthly charges shall be proportionately abated while the Collocator was deprived of the use. If the Dedicated Space cannot be repaired within ninety (90) business days, or **SBC-13STATE** opts not to rebuild, then **SBC-13STATE** shall notify the Collocator within thirty (30) business days following such occurrence that the Collocator's use of the Dedicated Space will terminate as of the date

of such damage. Upon the Collocator's election, **SBC-13STATE** must provide to the Collocator, a comparable substitute collocation arrangement at another mutually agreeable location at the applicable nonrecurring charges for that arrangement and location.

4.5.1.2 Any obligation on the part of **SBC-13STATE** to repair the Dedicated Space shall be limited to repairing, restoring and rebuilding the Dedicated Space as prepared for the Collocator by **SBC-13STATE**.

4.5.2 Damage to Eligible Structure

4.5.2.1 In the event that the Eligible Structure in which the Dedicated Space is located shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in **SBC-13STATE**'s opinion be advisable, then, notwithstanding that the Dedicated Space may be unaffected thereby, **SBC-13STATE**, at its option, may terminate services provided via this Appendix by giving the Collocator ten (10) business days prior written notice within thirty (30) business days following the date of such occurrence, if at all possible. Upon the Collocator's election, **SBC-13STATE** must provide to the Collocator, on a timely basis, a comparable substitute collocation arrangement at another mutually agreeable location at the applicable nonrecurring charges for that arrangement and location.

4.6 Construction Notification

4.6.1 **SBC-13STATE** will notify the Collocator prior to the scheduled start dates of all major construction activities (including power additions or modifications) in the general area of the Collocator's Dedicated Space with potential to disrupt the Collocator's services. **SBC-13STATE** will provide such notification to the Collocator at least twenty (20) business days before the scheduled start date of such major construction activity. **SBC-13STATE** will inform the Collocator as soon as practicable by telephone of all emergency-related activities that **SBC-13STATE** or its subcontractors are performing in the general area of the Collocator's Dedicated Space, or in the general area of the AC and DC power plants which support the Collocator's equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that the Collocator may take reasonable actions necessary to protect the Collocator's Dedicated Space.

4.7 Construction Inspections

4.7.1 During the construction of all forms of Physical Collocation space required under this Appendix, Collocator shall be permitted up to four (4) inspections during the construction in an Eligible Structure during normal business hours with a minimum of two (2) hours advance notification. If the construction interval is extended beyond the agreed upon interval, Collocator will be granted two (2) additional visits per thirty (30) day extension. Requests for construction inspections shall be given to the contact number as specified in Section 4.2 of this Appendix. If any local travel expenses are incurred, the Collocator will be charged for the time **SBC-13STATE**'s employees spend traveling and will be based on fifteen (15) minute increments.

5. OBLIGATIONS OF THE COLLOCATOR

5.1 Certification

5.1.1 The Collocator requesting Physical Collocation is responsible for obtaining any necessary certifications or approvals from the Commission prior to provisioning of telecommunications

service by using the Physical Collocation space. SBC-13STATE shall not refuse to process an application for collocation space and shall not refuse to provision the collocation space submitted by a telecommunications carrier while that telecommunications carrier's state certification is pending or prior to a final approved interconnection agreement.

5.2 Contact Numbers

5.2.1 The Collocator is responsible for providing to SBC-13STATE personnel a contact number for Collocator technical personnel who are readily accessible 24 hours a day, 7 days a week. In addition, for all activities requiring verbal and written notification per this Appendix, the Parties will provide the contact numbers included in the application process.

5.3 Trouble Report

5.3.1 The Collocator is responsible for making best efforts to provide prompt verbal notification to SBC-13STATE of significant outages or operations problems which could impact or degrade SBC-13STATE's network, switches or services, with an estimated clearing time for restoral. In addition, Collocator will provide written notification within 24 hours. When trouble has been identified, Collocator is responsible for providing trouble status reports, consistent with Section 4.3 of this Appendix, when requested by SBC-13STATE.

5.4 Removal

5.4.1 The Collocator is responsible for removing any equipment, property or other items that it brings into the Dedicated Space or any other part of the Eligible Structure in which the Dedicated Space is located within thirty (30) business days after discontinuance or termination of the Physical Collocation arrangement. Provided, however, that if removal has begun but will not be completed within the initial thirty (30) business days, Collocator may, upon written notice to SBC-13STATE, may request an additional thirty (30) calendar days to complete the removal. After such time, SBC-13STATE may remove the abandoned materials and the Collocator is responsible for payment of any and all claims, expenses, fees or other costs associated with any such removal by SBC-13STATE, including any materials used in the removal and the time spent on such removal, at the hourly rate for custom work. The Collocator will hold SBC-13STATE harmless from the failure to return any such equipment, property or other items.

5.5 Hazardous Waste and Materials

5.5.1 The Collocator and its vendors shall adhere to all federal, state and local regulations regarding hazardous material/waste. In addition, the telecommunications carrier's Installation Supplier shall adhere to all SBC-13STATE requirements. The Installation Supplier shall coordinate with the SBC-13STATE representative before any activity relating to hazardous material/waste is started. Interconnector's Guide for Collocation may be accessed via <https://clec.sbc.com/clec>, Products and Services, Collocation Services, Handbook 13State, Appendix B.

5.6 Safety

5.6.1 The Installation Supplier shall be entirely responsible for the safety and instruction of its employees or representatives. The Installation Supplier shall take precautions to avoid harm to personnel, equipment, and building (e.g., cutting installed threaded rod) of SBC-13STATE or other telecommunications carriers. The Installation Supplier shall immediately report to the SBC-13STATE representative any accident, outside agency inspection or hazardous condition, such as any accident or injury that occurs to employees or subcontractors of the Installation Supplier while on SBC-13STATE premises or any OSHA inspection or citations issued to the Installation Supplier while on SBC-13STATE premises. (Refer to Interconnector's Guide for Collocation for further details.)

5.7 Collocator's Equipment and Facilities

5.7.1 The Collocator is solely responsible for the design, engineering, testing, performance and maintenance of the telecommunications equipment and facilities used in the Dedicated Space. The Collocator will be responsible for servicing, supplying, repairing, installing and maintaining the following within the Dedicated Space or optional Point of Termination (POT) frame located in the common area:

5.7.1.1 its fiber optic cable(s) or other permitted transmission media as specified in Section 8.1;

5.7.1.2 its equipment;

5.7.1.3 required point of termination cross connects in the Dedicated Space or the optional POT Frame/Cabinet located in the Common Area;

5.7.1.4 POT frame maintenance, including replacement power fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within the Dedicated Space or in the optional POT Frame/Cabinet located in the Common Area and accessible by the Collocator and only if and as required; and

5.7.1.5 the connection cable and associated equipment which may be required within the Dedicated Space(s) or in the optional POT Frame/Cabinet located in the Common Area to the point(s) of termination.

5.7.2 **SBC-13STATE** neither accepts nor assumes any responsibility whatsoever in any of the areas so designated in this Section.

5.8 Insurance

5.8.1 Coverage Requirements

5.8.1.1 The Collocator agrees to maintain, at all times, the following minimum insurance coverage and limits and any additional insurance and/or bonds required by law as stated in General Terms & Conditions, Section 4:

5.8.1.1.1 All Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the Eligible Structure or the Dedicated Space. Collocator releases **SBC-13STATE** from and waives any and all right of recovery, claim, action or cause of action against **SBC-13STATE**, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the request of Collocator when such loss or damage is by reason of fire or water or the elements or any other risks that would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of **SBC-13STATE**, its agents, directors, officers, employees, independent contractors, and other representatives.

5.8.1.1.2 Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against **SBC-13STATE**, and any rights of Collocator against **SBC-13STATE** for damage to Collocator's fixtures or personal property are hereby waived. Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that **SBC-13STATE** has no liability for loss of profit or revenues should an interruption of service occur that is attributable to any Physical Collocation arrangement provided under this Appendix.

- 5.8.1.1.3 **SBC-13STATE** requires that companies affording insurance coverage have a B+ VII or better rating, as rated in the A.M. Best Key rating Guide for Property and Casualty Insurance Companies.

A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. The insurance provisions and requirements are reciprocal to **SBC-13STATE** as well. If a certificate is not received, **SBC-13STATE** will notify the Collocator, and the Collocator will have five (5) business days to cure the deficiency. If the Collocator does not cure the deficiency within five (5) business days, Collocator hereby authorizes **SBC-13STATE**, and **SBC-13STATE** may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. **SBC-13STATE** will invoice Collocator for the costs incurred to so acquire insurance.

- 5.8.1.1.3.1 The cancellation clause on the certificate of insurance will be amended to read as follows:

"SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER."

- 5.8.1.2 The Collocator shall also require all contractors who may enter the Eligible Structure to maintain the same insurance requirements listed above.

6. ORDERING AND PROVISIONING

6.1 Dedicated Space

6.1.1 Types of Available Physical Collocation Arrangements

SBC-13STATE will make each of the arrangements outlined below available within its Eligible Structures in accordance with this Appendix so that Collocator will have a variety of collocation options from which to choose:

- 6.1.1.1 **Caged Physical Collocation** - The Caged Collocation option provides the Collocator with an individual enclosure (not including a top). This enclosure is an area designated by **SBC-13STATE** within an Eligible Structure to be used by the Collocator for the sole purpose of installing, maintaining and operating the Collocator-provided equipment.

- 6.1.1.1.1 **SBC-13STATE** will provide floor space, floor space site conditioning, cage common systems materials, cage preparation, and safety and security charges in increments of one (1) square foot. For this reason, Collocator will be able to order space and a cage enclosure in amounts as small as that sufficient to house and maintain a single rack or bay of equipment, (i.e., 50 square feet of cage space for a single bay) and will ensure that the first collocator in a **SBC-13STATE** premises will not be responsible for the entire cost of site preparation and security. Rates and charges are as found in Section 20 following.

- 6.1.1.1.2 When Collocator constructs its own cage and related equipment, the Collocator will not be subject to the Cage Preparation Charges as set forth in Section 20 following.

- 6.1.1.1.3 The Collocator must comply with all methods, procedures and guidelines followed by **SBC-13STATE** in constructing such an arrangement. The Collocator may provide a cage enclosure (which shall not include a top), cable

rack and support structure inside the cage, lighting, receptacles, cage grounding, cage sign and door key set. In addition, terms and conditions for contractors performing cage construction activities as set forth in Section 16 following will apply. If the Collocator elects to install or requests that **SBC-13STATE** provide and install a point of termination (POT) frame in the dedicated collocation area rather than inside its cage, the floor space rate for Cageless Collocation found in Section 21.3 following applies.

- 6.1.1.2 Caged Shared Collocation - **SBC-13STATE** will provide Caged Shared Collocation as set forth in Section 7 following, "Use by Other Local Service Providers." Two or more collocators may initially apply at the same time to share a Caged Collocation space as set forth in Section 7.1 following. Charges to each collocator will be based upon the percentage of total space utilized by each collocator.
- 6.1.1.3 Caged Common Collocation - **SBC-13STATE** will provide Caged Common Collocation as set forth in Section 7.1.1 following.
- 6.1.1.4 Cageless Collocation - **SBC-13STATE** will provide Cageless Collocation in any collocation space that is supported by the existing telecommunications infrastructure (Active Collocation Space), or in the event that all such space is exhausted or completely occupied, will provide in any collocation space that requires additional telecommunications infrastructure (Other (Inactive) Collocation Space), as further defined in Section 2 of this Appendix. Under this arrangement, **SBC-13STATE** will provide space in single bay increments, including available space adjacent to or next to **SBC-13STATE**'s equipment. Collocator will have direct access to its equipment twenty-four (24) hours a day, seven (7) days a week without need for a security escort. **SBC-13STATE** will not require Collocator to use an intermediate interconnection arrangement such as a POT frame. **SBC-13STATE** may take reasonable steps to protect its own equipment as provided in Section 6.1.2 of this Appendix. Accordingly, **SBC-13STATE** will not provide Collocator's personnel or agents with direct access to **SBC-13STATE**'s main distribution frame.
- 6.1.1.5 Adjacent Space Collocation - Where Physical Collocation space within **SBC-13STATE** Eligible Structure is Legitimately Exhausted, as that term is defined in Section 2 of this Appendix, **SBC-13STATE** will permit Collocator to physically collocate on **SBC-13STATE**'s property in adjacent controlled environmental vaults or similar structures that **SBC-13STATE** uses to house telecommunication equipment, to the extent technically feasible. **SBC-13STATE** and telecommunications carrier will mutually agree on the location of the designated space on **SBC-13STATE** premises where the adjacent structure will be placed. **SBC-13STATE** will not unreasonably withhold agreement as to the site desired by Collocator. Safety and maintenance requirements, zoning and other state and local regulations are all reasonable grounds to withhold agreement as to the site desired by the Collocator. **SBC-13STATE** will offer the following increments of power to the Adjacent On-site structure: **SBC-13STATE** will provide a standard offering of 100 AMPS of AC power to the adjacent structure when Central Office Switchboard AC capacity exists. **SBC-13STATE** will provide DC power within two cable options that allow increments of 2-100 Amp Power Feeds, 2-200 Amp Power Feeds, 2-300 Amp Power Feeds, and 2-400 Amp Power Feeds to the adjacent structure from the Central Office Power source. At its option, the Collocator may choose to provide its own AC and DC power to the adjacent structure. **SBC-13STATE** will provide Physical Collocation services to such adjacent structures, subject to the same requirements as other collocation arrangements in this Appendix. **SBC-13STATE** shall permit Collocator to place its own equipment, including, but not limited to, copper cables, coaxial cables,

fiber cables and telecommunications equipment, in adjacent facilities constructed by either **SBC-13STATE** or the Collocator. Collocator shall be responsible for securing all required licenses and permits, the required site preparations and shall further retain responsibility for securing and/or constructing the adjacent structure and any building and site maintenance associated with the placement of such adjacent structure.

6.1.1.5.1 Where Physical Collocation space within **SBC-13STATE** Eligible Structure is Legitimately Exhausted, and Collocator's Adjacent On-site space is not within 50 ft. of the Eligible Structure's outside perimeter wall, the Collocator has the option and **SBC-13STATE** shall permit an Adjacent Structure Off-site Arrangement, to the extent technically feasible.

6.1.1.5.2 The Adjacent Off-site Arrangement is available if the Collocator's site is located on a property that is contiguous to or within one standard city block of the **SBC-13STATE** Central Office or Eligible Structure. Such arrangement shall be used for interconnection and access to Lawful UNEs. When the Collocator elects to utilize an Adjacent Off-site Arrangement, the Collocator shall provide both the AC and DC power required to operate such facility. The Collocator may provide its own facilities to **SBC-13STATE**'s premises or to a mutually agreeable meet point from its Adjacent Off-site location for interconnection purposes. The Collocator may subscribe to facilities available in the UNE rate schedule of the Collocator's Agreement.

6.1.1.5.3 At the time the Collocator requests this arrangement, the Collocator must provide information as to the location of the Adjacent Off-site facility, the proposed method of interconnection, and the time frame needed to complete provisioning of the arrangement. **SBC-13STATE** shall provide a response to Collocator within ten (10) days of receipt of the application, including a price quote, provisioning interval, and confirmation of the manner in which the Adjacent Off-site Facility will be interconnected with **SBC-13STATE**'s facilities. **SBC-13STATE** shall make best efforts to meet the time intervals requested by Collocator and, if it cannot meet the Collocator's proposed deadline, shall provide detailed reasons, as well as proposed provisioning intervals.

6.1.1.5.4 In the event that interior space in an Eligible Structure becomes available, **SBC-13STATE** will provide the option to the Collocator to relocate its equipment from an Adjacent On-site or an Adjacent Off-site Facility into the interior space. In the event the Collocator chooses to relocate its equipment into the interior space, appropriate charges applicable for collocation within the Eligible Structure will apply.

6.1.1.6 **SBC-13STATE** will provide other collocation arrangements that have been demonstrated to be technically feasible. Deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a telecommunications carrier seeking collocation in **SBC-13STATE**'s Eligible Structures that such an arrangement is technically feasible.

6.1.2 Space Determination

6.1.2.1 As provided in Section 6.2 of this Appendix, **SBC-13STATE** shall notify the Collocator in writing as to whether its request for Physical Collocation has been granted or denied within ten (10) calendar days of submission of the completed application.

6.1.3 Security

6.1.3.1 Protection of **SBC-13STATE**'s equipment is crucial to its ability to offer service to its customers and to the integrity of the entire network. Therefore, **SBC-13STATE** may impose the following reasonable security measures on Collocator to assist in protecting its network and equipment from harm. **SBC-13STATE** may impose security arrangements as stringent as the security arrangements **SBC-13STATE** maintains at its own Eligible Structures either for its own employees or for authorized contractors. Except as provided by the FCC's Order released March 31, 1999, in CC Docket No. 98-147 (FCC 99-48), **SBC-13STATE** will not impose more stringent security requirements than those referenced in this FCC Order. Stated differently, the incumbent will not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent's equipment. **SBC-13STATE** will not use any information collected in the course of implementing or operating security arrangements for any marketing or other purpose in aid of competing with Collocator.

6.1.3.1.1 Collocator will conduct background checks of its personnel and technicians who will have access to the collocation space. Collocator technicians will be security-qualified by the Collocator and will be required to be knowledgeable of **SBC-13STATE** security standards.

6.1.3.1.1.1 Collocator personnel and technicians will undergo the same level of security training or its equivalent that **SBC-13STATE**'s own employees and authorized contractors must undergo. **SBC-13STATE** will not, however, require Collocator to receive security training from **SBC-13STATE**, but will provide information to Collocator on the specific type of training required.

6.1.3.1.1.2 Collocator can then provide its employees with its own security training. Qualification program and security training details shall be included in **SBC-13STATE**'s Technical Publications via <https://clec.sbc.com/clec>.

6.1.3.1.2 Collocator and **SBC-13STATE** will each establish disciplinary procedures up to and including dismissal or denial of access to the Eligible Structure and other property of **SBC-13STATE** for certain specified actions that damage, or place the equipment, facilities, or the network or personnel of the Collocator or **SBC-13STATE** in jeopardy. The following are actions that could damage or place the Eligible Structure, or the network or the personnel of the Collocator or **SBC-13STATE** in jeopardy and may justify disciplinary action up to and including dismissal or the denial of access to the Eligible Structure and other **SBC-13STATE** property:

6.1.3.1.2.1 Theft or destruction of **SBC-13STATE**'s or Collocator's property;

6.1.3.1.2.2 Use/sale or attempted use/sale of alcohol or illegal drugs on **SBC-13STATE** property;

6.1.3.1.2.3 Threats or violent acts against other persons on **SBC-13STATE** property;

6.1.3.1.2.4 Knowing violations of any local, state or federal law on **SBC-13STATE** property;

6.1.3.1.2.5 Permitting unauthorized persons access to **SBC-13STATE** or Collocator's equipment on **SBC-13STATE** property; and

6.1.3.1.2.6 Carrying a weapon on **SBC-13STATE** property.

In addition, Collocator and **SBC-13STATE** will take appropriate disciplinary steps as determined by each Party to address any violations reported by **SBC-13STATE** or the Collocator of **SBC-13STATE**'s policies and practices on security, safety, network reliability, and business conduct as defined in **SBC-13STATE**'s Interconnector's Collocation Services Handbook <https://clec.sbc.com/clec> for Physical Collocation in **SBC-13STATE**, provided the Handbook and any and all updates to it are timely provided to Collocator at no charge.

6.1.3.1.3 Collocator will provide indemnification as set forth in Section 12 of this Appendix and insurance as set forth in Section 5.8 of this Appendix and General Terms & Conditions to cover any damages caused by the Collocator's technicians. The indemnification provisions and requirements are reciprocal to **SBC-13STATE** as well.

6.1.3.1.4 **SBC-13STATE** may use reasonable security measures to protect its equipment. In the event **SBC-13STATE** elects to erect an interior security partition in a given Eligible Structure to separate its equipment, **SBC-13STATE** may recover the costs of the partition in lieu of recovering the costs of other reasonable security measures if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure. In no event shall the Collocator be required to pay for both an interior security partition to separate **SBC-13STATE**'s equipment in an Eligible Structure and any other reasonable security measure for such Eligible Structure.

6.1.3.1.4.1 **SBC-13STATE**'s construction of an interior security partition around its own equipment shall not interfere with a telecommunications carrier's access to its equipment, including equipment collocated directly adjacent to **SBC-13STATE**'s equipment. **SBC-13STATE**'s construction of an interior security partition around its own equipment shall not impede a telecommunications carrier's ability to collocate within **SBC-13STATE**'s space. To the extent that **SBC-13STATE** is required to install additional security measures within its interior security partition because a telecommunications carrier has access to its own equipment within the area, such security measures shall be constructed and maintained at **SBC-13STATE**'s expense.

6.1.3.1.4.2 **SBC-13STATE**'s enclosure of its own equipment will not be a basis for a claim that space is Legitimately Exhausted, nor will it be a basis for a claim that Active Collocation Space is exhausted.

6.1.3.1.4.3 **SBC-13STATE**'s enclosure of its own equipment will not unreasonably increase a telecommunications carrier's cost nor shall it result in duplicative security costs. The cost of an interior security partition around **SBC-13STATE**'s equipment cannot include any embedded costs of any other security measures for the Eligible Structure.

6.1.3.1.4.4 If **SBC-13STATE** chooses to enclose its own equipment, **SBC-13STATE** will be entitled to recover the cost of the cage ONLY to the extent that the price of such construction is lower than that of other reasonable security measures.

6.1.3.1.4.5 **SBC-13STATE** has the burden to demonstrate that the cost of security measures alternative to its partitioning of its own equipment is higher than the cost of enclosing its own equipment. If **SBC-13STATE** cannot prove that other reasonable security methods cost more than an interior security partition around **SBC-13STATE**'s equipment, **SBC-13STATE** cannot elect to erect an interior security partition in a given Eligible Structure to separate its equipment and then recover the cost from collocators.

6.1.3.1.4.6 If **SBC-13STATE** elects to erect an interior security partition and recover the cost, it must demonstrate to the Collocator that other reasonable security methods cost more than an interior security partition around **SBC-13STATE**'s equipment at the time the price quote is given.

6.1.3.1.5 Collocator will have access to its physically collocated equipment twenty-four (24) hours a day, seven (7) days a week, without a security escort. **SBC-13STATE** will not delay a Collocator's entry into an Eligible Structure or access to its collocated equipment. **SBC-13STATE** will provide Collocator with reasonable access to restroom facilities and parking. Collocator will also have reasonable access to collocator's collocation space during construction.

6.1.4 Interval

6.1.4.1 **SBC-13STATE** will provide Physical Collocation arrangements in Eligible Structures on a "first-come, first-served" basis. To apply for a Dedicated Space in a particular Eligible Structure, the Collocator will provide a completed Physical Collocation application form found in **SBC-13STATE**'s Interconnector's Collocation Services Handbook <https://clec.sbc.com/clec> for Physical Collocation in **SBC-13STATE** and will pay an initial Planning Fee (see Section 19. 2.1)

6.1.4.1.1 A Collocator wishing **SBC-13STATE** to consider multiple methods for collocation in an Eligible Structure on a single application will need to include in each application a prioritized list of its preferred methods of collocating, e.g., caged, shared, cageless, or other, as well as adequate information, (e.g., specific layout requirements, cage size, number of bays, requirements relative to adjacent bays, etc.) for **SBC-13STATE** to process the application for each of the preferred methods. If a Collocator provides adequate information and its preferences with its application, **SBC-13STATE** would not require an additional application, nor would the Collocator be required to restart the quotation interval should its first choice not be available in an Eligible Structure. If Collocator only wishes **SBC-13STATE** to consider one collocation method, it need not provide preferences and associated specific information for multiple methods. However, if **SBC-13STATE** is unable to provide the Collocator's requested collocation method due to space constraints, the collocation application will be denied and the initial planning fee returned. If the Collocator determines that the alternative method of collocation meets their needs, the Collocator will be required to submit a new collocation application and pay an initial Planning Fee. Upon receipt of the Collocator's application and initial Planning Fee payment, **SBC-13STATE** will begin development of the quotation. **SBC-13STATE** will advise the Collocator of any known deficiencies in its collocation application within ten (10) calendar days (unless multiple applications are received; Section 6.1.5 will apply where multiple applications are received). **SBC-13STATE** will allow the Collocator to

retain its place in the collocation queue so long as the Collocator cures the deficiencies and resubmits the application within ten (10) calendar days after written notice of the deficiencies.

6.1.4.2 In responding to an application request, if space is available, **SBC-13STATE** shall advise the Collocator that its request for Physical Collocation is granted, and confirm the applicable nonrecurring and recurring rates, and the provisioning interval. **SBC-13STATE** will not select for Collocator the type of Physical Collocation to be ordered.

6.1.4.2.1 The Collocator has sixty-five (65) calendar days. After sixty-five (65) calendar days, a new application and Planning Fee are required. The Collocator has sixty-five (65) calendar days to remit a signed confirmation form along with a check for fifty percent (50%) of all the applicable non-recurring charges.

6.1.4.3 **SBC-13STATE** will provide a reduced interval for Collocator with existing Physical Collocation space when it requests the following interconnection augments for that existing space. The Collocator must submit to **SBC-13STATE's** Collocation Service Center (CSC) a complete and accurate application for a subsequent job. For a reduced build-out interval to apply, this application must include an up-front payment of the nonrecurring Planning Fee from the Collocation Rate Summary of this Appendix and fifty percent (50%) of nonrecurring charges. In addition, the application must include an accurate front equipment view (a.k.a. rack elevation drawing) specifying bay(s) for the Collocator's point of termination. Applications received with the up-front payment and meeting the criteria below will not require a quote.

6.1.4.3.1 A sixty (60) calendar day interval will apply only when the Collocator requests any of the following augments; 1) **SBC-13STATE** will perform a cage expansion of 300 square feet or less immediately adjacent to Collocator's existing cage within the collocation area (where Overhead Iron/Racking exists) and as long as the collocation area does not have to be reconfigured and does not involve HVAC work, 2) power cable additions to accommodate greater DC amperage requests within existing power panels, 3) direct cable pull within the same collocation area between one Collocator and another Collocator provided the Collocator is interconnected with **SBC-13STATE's** network, 4) interconnection cable arrangements (where Overhead Iron/Racking are existing) limited up to and not more than the following quantities; 400 copper (shielded or nonshielded) cable pairs up to 400 feet, 168 DS1s, 48 DS3s, and fiber interconnections up to 12 fiber pairs up to 400 feet.

6.1.4.3.2 Other augments such as power requests that exceed current capacity ratings, additional bay spaces, **SBC-13STATE** bays, **SBC-13STATE** cable racks and/or cage expansions within Active Central Office space different than described above will require the Collocator to submit an inquiry for quote. The price quote will contain the charges and the construction interval for that application.

6.1.4.3.3 The construction interval for these other augments will not exceed ninety (90) days. **SBC-13STATE** will work cooperatively with Collocator to negotiate a mutually agreeable construction interval for other augments not specifically provided for above.

6.1.4.3.4 The second fifty percent (50%) payment must be received by **SBC-13STATE** no more than one week prior to the scheduled augment completion date. On

the scheduled completion date, the Actual Point of Termination (APOT)
Connections will be provided to the Collocator by **SBC-13STATE**.

6.1.5 Application Quotation Interval for Physical Collocation

6.1.5.1 Should multiple applications be submitted by a Collocator within a ten (10) calendar day period, the following quotation intervals will apply:

Number of Applications by one Collocator	Quotation Interval
1 - 5	10 calendar days
6 - 10	15 calendar days
11 - 15	20 calendar days
16 - 20	25 calendar days

6.1.5.2 Should the Collocator submit 21 or more applications within ten (10) calendar days, the response interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof.

6.1.5.3 The Collocator may obtain a shorter response interval than are set forth above by scheduling a meeting with **SBC-13STATE** at least twenty (20) calendar days prior to submission of the first application to discuss, coordinate, and prioritize the Collocator's applications.

6.1.5.4 Any major revision to an application will be treated as a new application following the guidelines in Section 6.1.9 following and will be subject to the time intervals set forth above.

6.1.6 Caged, Caged Common Physical Collocation and Shared Caged Collocation Installation Interval

6.1.6.1 Dedicated Space for Caged Physical Collocation and Shared Caged Collocation is not reserved until the quotation is accepted.

6.1.6.2 Where space suitable for Central Office equipment (Active Central Office Space) is available, **SBC-13STATE** will deliver Caged Physical or Shared Caged Collocation within ninety (90) calendar days from the completion of the application process (when the Collocator has remitted a signed confirmation form along with a check for 50% of all applicable non-recurring charges.) If the available space is not suitable for Central Office equipment (Other Central Office Space) and must be converted to Active Central Office Space, thirty (30) calendar days will be added to the provisioning interval to allow for the conversion process to be completed.

6.1.6.3 Any material revision to a completed application will be treated as a new application following revision guidelines set forth in Section 6.1.9 following.

6.1.7 Cageless Physical Collocation Installation Interval

6.1.7.1 Dedicated space for Cageless Physical Collocation is not reserved until the quotation is accepted.

6.1.7.2 Where space suitable for Central Office equipment (Active Central Office Space) is available, **SBC-13STATE** will deliver Cageless Physical Collocation within ninety (90) calendar days from the completion of the application process (when the Collocator has remitted a signed confirmation form along with a check for fifty percent (50%) of all applicable non-recurring charges.) If the available space is not suitable for Central Office equipment (Other Central Office Space) and must be converted to Active Central Office Space, thirty (30) calendar days will be added to the provisioning interval to allow for the conversion process to be completed.

6.1.7.3 Any material revision to a completed application will be treated as a new application following revision guidelines set forth in Section 6.1.9 following.

6.1.8 **SBC-13STATE** will complete construction of Cageless Collocation in Eligible Structures such as CEVs, Huts and Vaults in ninety (90) days from the receipt of the Collocator's acceptance of the quotation along with a check for 50% of all applicable non-recurring charges where **SBC-13STATE** will be installing all or some of the bays. These construction intervals for Cageless Collocation in Active Collocation Space in a CEV, HUT, or Cabinet Eligible Structure apply where the Collocator is requesting maximum DC power of 50AMPs, either in a single or in multiple feeds of 50 AMPs (maximum 50 AMPs per feed). For Cageless Collocation in Active Collocation Space in a CEV, Hut, or Cabinet Eligible Structure where a Collocator is requesting DC power greater than 50 AMPs (e.g., 100 AMPs) per feed, **SBC-13STATE** will add thirty (30) calendar days to the provisioning interval.

6.1.9 Adjacent Space or Other Physical Collocation Arrangement Installation Intervals

6.1.9.1 Installation Intervals for Adjacent Space Collocation and Other Physical Collocation Arrangements as defined in Sections 6.1.1 (D) and (E) above will be reasonably related to the complexity of accommodating the requested arrangement.

6.1.10 Revisions

6.1.10.1 All revisions to an initial request for a Physical Collocation arrangement submitted by the Collocator must be in writing via a new application form. A new interval for the Physical Collocation arrangement will be established which shall not exceed the original "major" as defined herein. A major revision includes: adding telecommunications equipment that requires additional electrical power; changes in the configuration of the cage; an increase of ten percent (10%) or more of the square footage of the cage area requested; and adding design and engineering requirements above those which **SBC-13STATE** normally deploys and practices (i.e., redundancy of certain mechanical and electrical systems). However, minor revisions will not require that a new interval be established. Examples of minor revisions include: adding bays of equipment that do not significantly impact the existing/proposed electrical systems; adding light fixtures and outlets which do not exceed the capacity of the existing/proposed electrical system; changes in the configuration of the cage which do not significantly impact the overall design of the space; and adjustments to the heat release projection which do not cause a change in the proposed/existing mechanical system. This list is not all-inclusive. The Collocator will be required to pay any applicable Planning Fees. No additional Planning Fees shall be applicable if the revision is minor. All engineering design work that is determined not to be major is deemed to be minor.

6.2 Space Availability Determination and Resolution

6.2.1 In responding to an application request if space is not available, **SBC-13STATE** will notify the Collocator that its application for Dedicated Space is denied due to the lack of space within ten (10) calendar days of **SBC-13STATE**'s receipt of a completed application.

6.2.1.1 The notification will also include a possible future space relief date, if applicable. At that time, any nonrecurring charges collected with the application, including the Planning Fee, will be returned to the Collocator.

6.2.1.2 **SBC-13STATE** will file a copy of the notification letter denying the Collocator's request with the appropriate Commission. In the event of a denial, **SBC-13STATE** will concurrently submit to both the appropriate Commission and the Collocator, in support of its denial, provided under seal and subject to proprietary protections: Central Office common language identifier, where applicable, the identity of the requesting Collocator,

including amount of space requested by the Collocator, the total amount of space at the premises, floor plans documented as provided for in Section 3.8 of the Interconnector's Collocation Services Handbook <https://clec.sbc.com/clec>, identification of switch turnaround plans and other equipment removal plans and timelines, if any, Central Office rearrangement/expansion plans, if any, and description of other plans, if any, that may relieve space exhaustion.

- 6.2.1.3 In the event **SBC-13STATE** denies a Collocator's request and the Collocator disputes the denial, the Collocator may request a tour of the Eligible Structure to verify space availability or the lack thereof. The request shall be submitted to **SBC-13STATE**'s designated representative in writing. The inspection tour shall be scheduled within five (5) business days of receipt of the written request for a tour and the tour shall be conducted within ten (10) calendar days of the request or some other mutually agreed on date.
- 6.2.1.4 Prior to the inspection tour, a "Reciprocal Non-disclosure Agreement" shall be signed by the designated Company representative and the designated agent for the Collocator, who will participate in the tour.
- 6.2.1.5 **SBC-13STATE** will provide all relevant documentation to the Collocator agent including blueprints and plans for future facility expansions or enhancements, subject to executing the non-disclosure agreement. **SBC-13STATE**'s representative will accompany and supervise the Collocator agent on the inspection tour.
- 6.2.1.6 If the Collocator agent believes, based on the inspection tour of the Eligible Structure facilities, that the denial of Physical Collocation space is insupportable, the Collocator agent shall promptly so advise **SBC-13STATE**. The Collocator and **SBC-13STATE** shall then each concurrently prepare a report detailing its own findings of the inspection tour. The Collocator and **SBC-13STATE** reports shall be concurrently served on each other and submitted to the appropriate Commission no later than forty-five (45) calendar days following the filing of the request for space. The burden of proof shall be on **SBC-13STATE** to justify the basis for any denial of collocation requests.
- 6.2.2 **SBC-13STATE** will submit to a requesting carrier a report indicating **SBC-13STATE**'s available collocation space in a particular **SBC-13STATE** Eligible Structure upon request. This report will specify the amount of collocation space available at each requested Eligible Structure, the number of collocators, and any modifications in the use of the space since the last report. The report will also include measures that **SBC-13STATE** is taking to make additional space available for collocation. The intervals for delivering the reports are as follows:

Number of Report Requests By One Collocator	Report Delivery Interval
1 - 5	10 Calendar Days
6 - 10	15 Calendar Days
11 - 15	20 Calendar Days
16 - 20	25 Calendar Days

- 6.2.2.1 Should the Collocator submit twenty-one (21) or more report requests within five (5) business days, the report delivery interval will be increased by five (5) business days for every five (5) additional report requests or fraction thereof.
- 6.2.2.2 **SBC-13STATE** shall maintain a publicly available document for viewing on the Internet indicating its Eligible Structures, if any, that have no space available for Physical Collocation. **SBC-13STATE** will update this document within ten (10) calendar days of the date at which an Eligible Structure runs out of Physical Collocation space. In addition, for Central Offices where collocators are currently located or applications for

collocation are pending, if space availability information is readily available to **SBC-13STATE**, such information will be placed on the website <https://clec.sbc.com/clec>. **SBC-13STATE** will update the public document on the first day of each month to include all newly available information.

6.2.2.3 To the extent **SBC-13STATE** has the information readily available, the public document should specify the amount of active and other (inactive) collocation space available at each Eligible Structure, the number of collocators, any modifications in the use of the space since the last update, and should also include measures that **SBC-13STATE** is taking to make additional space available for collocation. In order to increase the amount of space available for collocation, **SBC-13STATE** will remove obsolete unused equipment from its Eligible Structures that have no space available for Physical Collocation upon reasonable request by a Collocator or upon order of the appropriate Commission shall reserve space for switching, MDF and DCS to accommodate access line growth as outlined in Section 2 of this Appendix under the definition of the term "Legitimately Exhausted Space".

6.3 Relocation

6.3.1 When **SBC-13STATE** determines because of zoning changes, condemnation, or government order or regulation that it is necessary for the Dedicated Space to be moved within an Eligible Structure to another Eligible Structure, from an adjacent space collocation structure to a different adjacent space collocation structure, or from an adjacent space collocation structure to an Eligible Structure, the Collocator is required to move its Dedicated Space or adjacent space collocation structure. **SBC-13STATE** will notify the resident Collocator(s) in writing within five days of the determination to move the location. If the relocation occurs for reasons other than an emergency, **SBC-13STATE** will provide the resident Collocator(s) with at least one hundred eighty (180) days advance written notice prior to the relocation. If the Collocator is required to relocate under this Section, the Collocator will not be required to pay any application fees associated with arranging for new space. The Collocator shall be responsible for the preparation of the new telecommunications equipment space and Dedicated Space at the new location or an adjacent space collocation structure if such relocation arises from circumstances beyond the reasonable control of **SBC-13STATE**, including zoning changes, condemnation or government order or regulation that makes the continued occupancy or use of the Dedicated Space or the Eligible Structure in which the Dedicated Space is located or the adjacent space collocation structure for the purpose then used, uneconomical in **SBC-13STATE**'s reasonable discretion. In addition, a Collocator's presence in **SBC-13STATE** Central Offices or adjacent space collocation structures should not prevent **SBC-13STATE** from making a reasonable business decision regarding building expansions or additions to the number of Central Offices required to conduct its business or its locations.

6.3.2 If **SBC-13STATE** determines that a Collocator must relocate due to any of the above reasons in Section 6, **SBC-13STATE** will make all reasonable efforts to minimize disruption of the Collocator's services. In addition, the costs of the move will be shared equally by **SBC-13STATE** and the Collocator, unless the Parties agree to a different financial arrangement.

6.3.3 If the Collocator requests that the Dedicated Space be moved within the Eligible Structure in which the Dedicated Space is located, to another Eligible Structure, from an adjacent space collocation structure to a different adjacent space collocation structure or to a different Eligible Structure, **SBC-13STATE** shall permit the Collocator to relocate the Dedicated Space or adjacent space collocation structure, subject to availability of space and technical feasibility. The Collocator shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new telecommunications equipment space, and Dedicated Space, or adjacent space collocation

structure as applicable. In any such event, the new Dedicated Space shall be deemed the Dedicated Space and the new Eligible Structure (where applicable) shall be deemed the Eligible Structure in which the Dedicated Space is located and the new adjacent space collocation structure shall be deemed the adjacent space collocation structure.

6.4 Occupancy

6.4.1 Unless there are unusual circumstances, **SBC-13STATE** will notify the Collocator that the Dedicated Space is ready for occupancy within five (5) business days after **SBC-13STATE** completes preparation of the Dedicated Space. Operational telecommunications equipment must be placed in the Dedicated Space and interconnect to **SBC-13STATE**'s network or obtain access to **SBC-13STATE** Lawful UNEs within one hundred eighty (180) days after receipt of such notice. In the event that **SBC-13STATE** has refused to interconnect with the Collocator, the one hundred eighty (180) day deadline shall be extended until **SBC-13STATE** allows the Collocator to interconnect. **SBC-13STATE**, however, may extend beyond the one hundred eighty (180) days provided the Collocator demonstrates a best effort to meet that deadline and shows that circumstances beyond its reasonable control prevented the Collocator from meeting that deadline.

6.4.2 If the Collocator fails to do so and the unused collocation space is needed to meet customer demand (filed application for space, accompanied by all fees) for another Collocator or to avoid construction of a building addition, collocation in the prepared Dedicated Space is terminated on the tenth (10) business day after **SBC-13STATE** provides the Collocator with written notice of such failure and the Collocator does not place operational telecommunications equipment in the Dedicated Space and interconnect with **SBC-13STATE** or obtain access to **SBC-13STATE** Lawful UNEs by that tenth (10) business day. In any event, the Collocator shall be liable in an amount equal to the unpaid balance of the applicable charges.

6.4.3 For purposes of this Section, the Collocator's telecommunications equipment is considered to be operational and interconnected when connected to either **SBC-13STATE**'s network or interconnected to another Collocator's equipment that resides within the same structure, provided the Collocator's equipment is used for interconnection with **SBC-13STATE**'s network or to obtain access to **SBC-13STATE**'s Lawful UNEs, for the purpose of providing this service.

6.4.4 If the Collocator causes **SBC-13STATE** to prepare the Dedicated Space and then the Collocator does not use the Dedicated Space (or all the Dedicated Space), the Collocator will pay **SBC-13STATE** the monthly recurring and other applicable charges as if the Collocator were using the Dedicated Space.

6.5 Cancellation Prior to Due Date

6.5.1 In the event that the Collocator cancels its order after **SBC-13STATE** has begun preparation of the Telecommunications Infrastructure Space and Dedicated Space, but before **SBC-13STATE** has been paid the entire amounts due under this Appendix, then in addition to other remedies that **SBC-13STATE** might have, the Collocator shall be liable in the amount equal to the nonrecoverable costs less estimated net salvage, the total of which is not to exceed the Preparation Charges. Nonrecoverable costs include the nonrecoverable cost of equipment and material ordered, provided or used; the nonrecoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. **SBC-13STATE** shall provide the Collocator with a detailed invoice showing the costs it incurred associated with preparation.

6.6 Billing

6.6.1 Investigation Report

6.6.1.1 Upon receipt of the notice and forms of proof set forth in General Terms and Conditions , Section 8, **SBC-13STATE** shall make an investigation as shall be required to report the results to the Collocator. Provided that Collocator has furnished all of the information and proof required by Section 6.6.1 on or before the Bill Due Date, **SBC-13STATE** will report the results of its investigation within sixty (60) calendar days following the Bill Due Date. If the Collocator is not satisfied by the resolution of the billing dispute under this Section 6.6.5 of this Appendix, the Collocator must notify **SBC-13STATE** in writing within thirty (30) days following receipt of the results of **SBC-13STATE**'s investigation that it wishes to invoke the informal resolution of billing disputes afforded under Section 6.6.6 of this Appendix.

6.6.2 Informal Resolution of Billing Disputes

6.6.2.2 Upon receipt by **SBC-13STATE** of written notice of a billing dispute from Collocator made in accordance with the requirements of Section 6.6.2 of this Appendix, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any billing dispute arising under this Appendix. The location, form, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of resolution are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or any lawsuit.

6.6.7 Formal Resolution of Billing Disputes

6.6.7.1 If the Parties are unable to resolve the billing dispute through the informal procedure described in Section 6.6.6 of this Appendix, then either Party may invoke the formal dispute resolution procedures described in this Section 6.6.7 of this Appendix. Unless agreed by both Parties, formal dispute resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the notice initiating dispute resolution required by Section 6.6.5 of this Appendix. and not later than one hundred eighty (180) calendar days after receipt of the notice initiating dispute resolution required by Section 6.6.5 of this Appendix. Upon the 181st day, either Party may choose to seek arbitration pursuant to Section 6.6.8

6.6.7.2 Billing Disputes Subject to Mandatory Arbitration – If not settled through informal dispute resolution, each unresolved billing dispute involving one percent (1%) or less of the amounts charged to Collocator under this Appendix during the twelve (12) months immediately preceding receipt of the notice initiating Dispute Resolution required by Section 6.6.5 of this Appendix will be subject to mandatory arbitration in accordance with Section 6.6.8 of this Appendix, below. If the Collocator has not been billed for a minimum of twelve (12) months immediately preceding receipt of the notice initiating Dispute Resolution required by Section 6.6.5 of this Appendix, the Parties will annualize the actual number of months billed.

6.6.7.3 Billing Disputes Subject to Elective Arbitration – If not settled through informal dispute resolution, each unresolved billing dispute involving more than one percent (1%) of the amounts charged to Collocator under this Appendix during the twelve (12) months immediately preceding receipt of the notice initiating Dispute Resolution required by

Section 6.6.5 of this Appendix will be subject to elective arbitration pursuant to Section 6.6.8 if, and only if, both Parties agree to arbitration. If the Collocator has not been billed for a minimum of twelve (12) months immediately preceding receipt of the notice initiating Dispute Resolution required by Section 6.6.5 of this Appendix, the Parties will annualize the actual number of months billed. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

6.6.8 Arbitration

6.6.8.1 Disputes subject to mandatory or elective arbitration under the provisions of this Appendix will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in a mutually agreed upon location. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration.

6.6.8.2 The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Appendix.

6.6.8.3 The times specified in this Section 6.6.8 may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

6.6.9 Cooperation Between Parties

6.6.9.1 Immediately upon resolution of any billing dispute, **SBC-13STATE** and the Collocator shall cooperate to ensure that all of the following actions are taken within the time(s) specified:

6.6.9.1.1 **SBC-13STATE** shall credit Collocator's bill for any portion of the Disputed Amount(s) resolved in favor of Collocator, together with any portion of any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the dispute. Escrow procedures will be pursuant to the General Terms and Conditions, Section 8.

6.6.11 Billing for Caged Shared and Caged Common Collocation Arrangements

6.6.11.1 Except for certain charges identified as related to Caged Shared Collocation, each collocator shall be billed separately and shall be able to order and provision separately. In the case of Caged Shared Collocation, **SBC-13STATE** shall bill the original collocator for space. However, **SBC-13STATE** shall bill the other collocators in the shared cage for use of Network Elements and interconnection separately as required. Collocators located in a Caged Common Collocation area shall have direct billing

arrangements with **SBC-13STATE** for floor space and all other applicable interconnection arrangements.

6.7 Late Payment Charge

6.7.1 If the Collocator fails to remit payment for any undisputed charges by the Bill Due Date, or if a payment or any portion of a payment is received from Collocator after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available to **SBC-13STATE** as of the Bill Due Date, then a late payment charge shall be assessed as follows: at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.

6.8 Allowances for Interruptions

6.8.1 An interruption period begins when an inoperative condition of a Physical Collocation arrangement is reported to **SBC-13STATE**'s designated contact point and ends when the Physical Collocation arrangement is operative and reported to the Collocator's designated contact. No allowance for an interruption period will be provided for Physical Collocation where the interruption is due to the actions or negligence of the Collocator. A credit allowance will be made to the Collocator where the interruption is due to the actions or negligence of **SBC-13STATE**.

6.8.2 When a credit allowance does apply, such credit will be determined based on the monthly recurring rates applicable to the specific item(s) causing the interruption; however, the credit allowance for an interruption or for a series of interruptions shall not exceed the applicable monthly recurring rate for the item(s) involved.

6.8.3 For calculating credit allowances, every month is considered to have thirty (30) days. No credit shall be allowed for an interruption of less than thirty (30) minutes. The Collocator shall be credited for an interruption of thirty (30) minutes or more at the rate of 1/1440 of the monthly recurring rate.

6.8.4 When a third Party vendor maintains and repairs a Collocator's designated termination equipment, a credit allowance will not apply to any interruption of the items maintained and repaired by the third Party vendor.

7. USE BY OTHER LOCAL SERVICE PROVIDERS

7.1 The Collocator shall not assign or otherwise transfer, either in whole or in part, or permit the use of any part of the Dedicated Space by any other person or entity, without the prior written consent of **SBC-13STATE**, which consent shall not be unreasonably withheld. Any purported assignment or transfer made without such consent shall be voidable at the sole discretion of **SBC-13STATE**.

7.2 **SBC-13STATE** will make shared collocation cages available to all collocators. A shared collocation cage is a Caged Collocation space shared by two (2) or more collocators pursuant to the terms and conditions agreed to and between the collocators. In making shared cage arrangements available, **SBC-13STATE** may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning such a cage of similar dimensions and material to a single collocating Party. In those instances where **SBC-13STATE** receives applications simultaneously from multiple collocators who desire construction of a cage to be shared, **SBC-13STATE** will prorate the charge for site conditioning and preparation undertaken to construct the shared collocation cage or condition the space, and allocate that charge to each collocator based upon the percentage of total space utilized by each Collocator.

7.2.1 **SBC-13STATE** will make Caged Common Collocation available to all collocators. The Caged Common Collocation option provides the collocators with an enclosure (not including a top).

This enclosure is an area designated by **SBC-13STATE** within an Eligible Structure to be used by the collocators for the sole purpose of installing, maintaining and operating the collocator-provided equipment. Caged Common Collocation space will be provided where space permits when five (5) or more collocators have provided **SBC-13STATE** with their forecasted space requirements accompanied with a firm order and twenty five percent (25%) of non-recurring charges for the forecasted space as deposit.

7.2.2 When these criteria have been met, **SBC-13STATE** will construct a common cage minimum of 550 sq. ft. of space unless collocators' combined forecasted space needs for the initial year exceed 550 sq. ft., in which case, **SBC-13STATE** will construct the cage to the collocators' combined forecasts for the initial year. Subsequent additions to the Caged Common Collocation area will be based on firm orders with the Collocator(s) requesting additional space bearing the costs for such expansion. Billing for Caged Common Collocation is addressed in Section 6.6.11 of this Appendix.

7.3 **SBC-13STATE** will not place unreasonable restrictions on Collocator's use of a cage, and as such will allow Collocator to contract with other collocators to share the cage in a sublease-type arrangement. In a sublease-type arrangement, the initial collocator(s) shall charge any such co-locator no more than the prorated share (based upon square footage used exclusively or in common) of **SBC-13STATE**'s charges to the initial collocator(s). If two (2) or more collocators who have interconnection agreements with **SBC-13STATE** utilize a shared collocation cage, **SBC-13STATE** will permit each collocator to order Lawful UNEs to and provision service from that shared collocation space, regardless of which collocator was the original collocator.

8. FIBER OPTIC CABLE AND DEMARCATION POINT

8.1 Fiber Optic Cable Entrances

8.1.1 The Collocator shall use a dielectric fire retardant fiber cable as the transmission medium to the Dedicated Space or, where technically and structurally feasible, may use microwave. Collocation requests utilizing facilities other than fiber will be provided as an Individual Case Basis (ICB). **SBC-13STATE** will only permit copper or coaxial cable as the transmission medium where the Collocator can demonstrate to **SBC-13STATE** that use of such cable will not impair **SBC-13STATE**'s ability to service its own customers or subsequent collocators.

8.1.2 **SBC-13STATE** shall provide a minimum of two separate points of entry into the Eligible Structure in which the Dedicated Space is located wherever there are at least two entry points for **SBC-13STATE** cable. **SBC-13STATE** will also provide nondiscriminatory access to any entry point into Eligible Structures in excess of two points in those locations where **SBC-13STATE** also has access to more than two such entry points. Where such dual points of entry are not immediately available, **SBC-13STATE** shall perform work as is necessary to make available such separate points of entry for the Collocator at the same time that it makes such separate points of entry available for itself. In each instance where **SBC-13STATE** performs such work in order to accommodate its own needs and those specified by the Collocator in the Collocator's written request, the Collocator and **SBC-13STATE** shall share the costs incurred by prorating those costs using the number of cables to be placed in the entry point by both **SBC-13STATE** and the Collocator(s) in the first twelve (12) months.

8.1.3 The Collocator is responsible for bringing its facilities to the entrance manhole(s) designated by **SBC-13STATE**, and leaving sufficient length in the cable in order for **SBC-13STATE** to fully extend the Collocator-provided facilities through the cable vault to the Dedicated Space.

8.2 Demarcation Point

- 8.2.1 A Point of Termination (POT) Frame is not required as the demarcation point. However, the Collocator may, at its election, provide its own Point of Termination (POT) frame either in its dedicated cage space or in **SBC-13STATE**-designated area within the Eligible Structure. If the Collocator elects not to provide a POT Frame, **SBC-13STATE** will hand off the Interconnection Arrangement(s) cables to the Collocator at its equipment.

9. USE OF DEDICATED SPACE

9.1 Nature of Use

- 9.1.1 In accordance with section 251(c)(6) of the Act, the Collocator may collocate equipment for Physical Collocation if such equipment is necessary for interconnection to **SBC-13STATE** under 47.U.S.C. § 251(C) (2) or accessing **SBC-13STATE**'s Lawful UNEs under 47.U.S.C. § 251(C) (3) of the Act. For purposes of this Section, "necessary" means directly related to and thus necessary, required, or indispensable to interconnection or access to Lawful UNEs. Such uses are limited to interconnection to **SBC-13STATE**'s network "for the transmission and routing of Telephone Exchange service or Exchange Access," or for access to **SBC-13STATE**'s Lawful UNEs "for the provision of a telecommunications service."
- 9.1.2 Equipment that may be collocated solely for these purposes includes: (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and (2) equipment being collocated to terminate basic transmission facilities pursuant to 47 C.F.R. § 51.323(3).
- 9.1.3 In addition, **SBC-13STATE** permits Collocator collocation of certain Multifunctional Equipment included in the definition of "advanced services equipment" in section 1.3.d of the SBC/Ameritech Merger Conditions. Under the SBC/Ameritech Merger Condition, "advanced services equipment" is defined as follows: "(1) DSLAMs or functionally equivalent equipment; (2) spectrum splitters that are used solely in the provision of Advanced Services; (3) packet switches and multiplexers such as ATMs and Frame Relay engines used to provide Advanced Services; (4) modems used in the provision of packetized data; and (5) DACS frames used only in the provision of Advanced Services. Spectrum splitters (or the equivalent functionality) used to separate the voice grade channel from the Advanced Services channel shall not be considered Advanced Services Equipment; any such splitters installed after the Merger Closing Date that are located at the customer premises shall be considered network terminating equipment."
- 9.1.4 **SBC-13STATE** does not allow collocation of other Multifunctional Equipment, except that **SBC-13STATE** will voluntarily allow collocation of Remote Switch Module (RSM) solely under the following conditions: (1) the Remote Switch Module (RSM) may not be used as a stand-alone switch; it must report back to and be controlled by a Collocator identified host switch and direct trunking to the Remote Switch Module (RSM) will not be permitted; (2) the Remote Switch Module (RSM) equipment must be used only for the purpose of interconnection with **SBC-13STATE**'s network for the transmission and routing of Telephone Exchange service or Exchange Access or for access to **SBC-13STATE**'s Lawful UNEs for the provision of a telecommunications service. **SBC-13STATE** voluntarily will allow Collocator to collocate, on a non-discriminatory basis, other Multifunctional Equipment only if **SBC-13STATE** and Collocator mutually agree to such collocation.
- 9.1.5 For purposes of this Section, "Multifunctional Equipment" means equipment that has (1) functions that make the equipment "necessary for interconnection or access to Lawful UNEs and (2) additional functions that are not "necessary" for these purposes. Such additional functions include, but are not limited to, switching and enhanced service functions. **SBC-13STATE** will not allow collocation of stand-alone switching equipment or any enhanced services equipment.

- 9.1.6 **SBC-13STATE** voluntarily allows Collocator to place ancillary equipment, including cross-connect and other simple frames, routers, portable test equipment, equipment racks and bays, and other ancillary equipment on a non-discriminatory basis only if **SBC-13STATE** and Collocator mutually agree to such placement, in **SBC-13STATE**'s premises solely to support and be used with equipment that the Collocator has legitimately collocated in the same premises.
- 9.1.7 Pending the FCC's remand proceedings in accordance with the Court's Opinion in *GTE Service Corporation v. FCC*, No. 99-1176, 2000 U.S. App. LEXIS 4111 (D.C. Cir. March 17, 2000) ("GTE Opinion"), **SBC-13STATE** voluntarily will not disturb (1) equipment and (2) connection arrangements between different collocators' equipment in **SBC-13STATE**'s Eligible Premises, that prior to the May 11, 2000 effective date of the GTE Opinion, were (1) in place in **SBC-13STATE** Eligible Premises or (2) requested by Collocator and accepted by **SBC-13STATE** on the same basis as under the FCC's original, pre-vacated Collocation Order (*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order* (FCC 99-48), 14 FCC Rcd 4761 (1999)). **SBC-13STATE**'s agreement not to disturb these collocation arrangements pending completion of the remand proceedings will immediately expire if a federal or state court or regulatory agency attempts to apply any of the most favored nation provisions of the Act, of any state Merger Conditions, or of the FCC SBC/Ameritech Merger Conditions to such arrangements or deems such arrangements to be discriminatory vis-à-vis other carriers.
- 9.1.8 **SBC-13STATE** does not assume any responsibility for the installation, furnishing, designing, engineering, or performance of the Collocator's equipment and facilities.
- 9.1.9 When the Collocator's Physical Collocation arrangement is within the Eligible Structure, the Collocator may not provide its own DC power plant equipment (with rectifiers or chargers and batteries) or AC power backup equipment (e.g., Uninterruptable Power System with batteries, or standby engine). **SBC-13STATE** will provide the necessary backup power to ensure against power outages.
- 9.1.10 Consistent with the environment of the Dedicated Space, the Collocator shall not use the Dedicated Space for office, retail, or sales purposes. No signage or marking of any kind by the Collocator shall be permitted on the Eligible Structure in which the Dedicated Space is located or on **SBC-13STATE** grounds surrounding the Eligible Structure in which the Dedicated Space is located. The Collocator may place signage and markings on the inside of its dedicated space.
- 9.2 Equipment List
- 9.2.1 A list of all the equipment and facilities that the Collocator will place within its Dedicated Space must be included on the application for which the Dedicated Space is prepared including the associated power requirements, floor loading, and heat release of each piece. The Collocator's equipment and facilities shall be compliant with the standards set out in Section 10.1, Minimum Standards, following. The Collocator warrants and represents that the list is complete and accurate, and acknowledges that any incompleteness or inaccuracy would be a violation of the rules and regulations governing this Appendix. The Collocator shall not place or leave any equipment or facilities within the Dedicated Space not included on the list without the express written consent of **SBC-13STATE**, which consent shall not be unreasonably withheld.
- 9.2.2 Subsequent Requests to Place Equipment
- 9.2.2.1 The Collocator shall furnish **SBC-13STATE** a written list in the form of an attachment to the original equipment list for the subsequent placement of equipment in its Dedicated Space.
- 9.2.3 Limitations

9.2.3.1 **SBC-13STATE**'s obligation to purchase additional plant or equipment, relinquish occupied space or facilities, or to undertake the construction of new building quarters or to construct building additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment of facilities by a Collocator, is limited only to the extent that **SBC-13STATE** would undertake such additions, modifications or construction on its own behalf, on behalf of any subsidiary or affiliate, or any other Party to which it provides interconnection. **SBC-13STATE** will ensure that the Collocator is provided collocation space at least equal in quality to that provided to **SBC-13STATE**, its affiliates or other Parties to which it provides interconnection.

9.3 Dedicated Space Use and Access

9.3.1 The Collocator may use the Dedicated Space for placement of telecommunications equipment and facilities necessary (as defined by the FCC) for interconnection to **SBC-13STATE** or access to **SBC-13STATE**'s Lawful UNEs. The Collocator's employees, agents and contractors shall be permitted access to its collocated equipment seven (7) days a week, twenty-four (24) hours a day without a security escort. Collocator shall provide **SBC-13STATE** with notice at the time of dispatch of its own employee or contractor, to an Eligible Structure and, if possible, no less than thirty (30) minutes notice for a manned structure and sixty (60) minutes notice for an unmanned structure.

9.3.2 **SBC-13STATE** will not delay a Collocator employee's entry into an Eligible Structure containing its collocated equipment or its access to its collocated equipment. **SBC-13STATE** will provide Collocator with reasonable access to restroom facilities and parking. All access is provided subject to compliance by the Collocator's employees, agents and contractors with **SBC-13STATE**'s policies and practices pertaining to fire, safety and security (i.e., the Collocator must comply with Section 6.1.3 of this Appendix).

9.3.3 The Collocator agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Dedicated Space. Upon the discontinuance of service, the Collocator shall surrender the Dedicated Space or land for an adjacent structure to **SBC-13STATE**, in the same condition as when first occupied by the Collocator, except for ordinary wear and tear.

9.3.4 **SBC-13STATE** will not accept delivery of nor responsibility for any correspondence and/or equipment delivered to the Collocator at the Eligible Structure. However, through agreement between **SBC-13STATE** and the Collocator, a Collocator may make arrangements for receipt and/or securing of its equipment at the Eligible Structure by Collocator's or **SBC-13STATE**'s personnel.

9.4 Threat to Personnel, Network or Facilities

9.4.1 Regarding safety, Collocator equipment or operating practices representing a significant demonstrable technical or physical threat to **SBC-13STATE**'s personnel, network or facilities, including the Eligible Structure, or those of others are strictly prohibited.

9.5 Interference or Impairment

9.5.1 Regarding safety and notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Dedicated Space shall not create hazards for or cause damage to those facilities, the Dedicated Space, or the Eligible Structure in which the Dedicated Space is located; impair the privacy of any communications carried in, from, or through the Eligible Structure in which the Dedicated Space is located; or create hazards or cause physical harm to any individual or the public. Any of the foregoing would be in violation of this Appendix.