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March 18, 2004

BY FACSIMILE AND OVERNIGHT DELIVERY

Notices Manager
Contract Management
SBC Communications, Inc.
Four SBC Plaza, 9th Floor
311 S. Akard Street
Dallas, TX 75202

FAX: (214) 464-8528

Re: SBC's March 11, 2004 Proposed "Lawful UNE Amendment"

Dear Sir/Madam:

On behalf of ACN Communications Services, Inc.; Adelphia Business Solutions Operations, Inc. d/b/a TelCove; City Signal Communications, Inc.; Conversent Communications, LLC; CoreComm Illinois Inc.; CoreComm Michigan Inc.; CoreComm Newco Inc.; DSLnet Communications, LLC; El Paso Networks, LLC; Essex Acquisition Corporation; Fiber Technologies Networks, LLC; Globalcom, Inc.; LDMI Telecommunications, Inc.; Mpower Communications Corp.; New Edge Network, Inc. d/b/a New Edge Networks; RCN Telecom Services, Inc.; Southern California Edison Company (Edison Carrier Solutions); Vycera Communications, Inc.; and their respective affiliates, (collectively, the "CLECs"), we are writing regarding your letter of March 11, 2004 proposing a "Lawful UNE Amendment" to the CLECs' interconnection agreements in each of the SBC ILEC region states. The CLECs stand ready in good faith to negotiate any and all necessary amendments to their Agreements based upon changes in the law, subject to the existing change-of-law terms of their Agreements. However, for the reasons set forth below, it would be inappropriate and inefficient for SBC to attempt to seek formal dispute resolution over the terms of its "Lawful UNE Amendment" only eight days after sending the terms of the proposed amendment to CLECs for the first time. Instead, therefore, we propose that the parties initiate negotiations over SBC's proposed amendment if and when a change of law has occurred under the terms of their Agreements and when each party's opening position for such negotiations has become final.

I. If and When SBC Proposes Substantive Terms to Implement the *TRO*, CLECs Will Negotiate in Good Faith in a Timely Manner

SBC's March 11 letter might give a third-party observer the impression that the "Lawful UNE Amendment" has been subject to ongoing negotiation between the parties since October 2003. On the contrary, as you know, this new proposal has not been the subject of any significant negotiation in the industry. First, while SBC's letter to CLECs in October 2003 did request that the parties begin, after January 13, 2004, to negotiate terms for the implementation of the *Triennial Review Order* ("*TRO*"), SBC did not actively pursue negotiations with most CLECs either before or after that supposed January start date. Given that SBC was simultaneously seeking to overturn the *TRO* that any amendment would implement, by all appearances SBC's passive approach to negotiation was reasonably interpreted by CLECs as a preference to defer genuine negotiation until completion of the appeal.

In any case, while SBC's proposal purports to respond to the *TRO* and the *USTA II* decision,[1] nothing in the proposed "Lawful UNE Amendment" addresses any of the substantive conclusions of either. Thus, the proposed amendment cannot fairly be characterized as a reflection of changes to the substantive unbundling obligations that either party might claim have been altered. SBC's proposed amendment does not set forth revised substantive unbundling obligations; instead, it would replace existing change-of-law provisions, presumably so that SBC could later attempt to rewrite its substantive obligations unilaterally and without further negotiation. This proposal is unwarranted; the Agreements already set forth change-of-law provisions approved by the state commissions that provide the baseline framework for implementing substantive changes necessitated by any change in law. At such time that SBC is prepared to propose such substantive changes, the CLECs will comply with their obligations under the law and the Agreement to negotiate. Nothing contained in either the *TRO* or *USTA II* requires that change-of-law provisions in effective interconnection agreements be modified.

II. SBC Must Comply with Negotiation Intervals Set Forth in its Interconnection Agreements Before Seeking Dispute Resolution

Even once negotiations begin in earnest, SBC cannot simply announce that it will invoke formal dispute resolution procedures a mere eight days after offering a new proposal for the first time. CLECs cannot reasonably be expected to respond to SBC's latest proposal within eight days. Further, the parties' interconnection agreements set forth detailed and more deliberate terms that require the parties to negotiate for a specified number of days before either can petition a state commission for dispute resolution. For example, many agreements based upon SBC's template agreement provide that when initial negotiations to resolve a dispute remain unsuccessful after 45 days, the parties cannot seek resolution from a state commission without first appointing higher level negotiators to negotiate for an additional 45 days before any formal

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[1] *United States Telecom Ass'n v. FCC*, Case No. 00-1012 (D.C. Cir. Mar. 2, 2004) ("*USTA II*").

dispute resolution could be initiated at the state commission.[2] Other agreements provide for 90 days of negotiations after a change in law is "legally binding"; *i.e.*, nonappealable.[3] Therefore, the appropriate schedule for negotiations, and if necessary, dispute resolution, would vary based upon the terms of the interconnection agreements.

III. Dispute Resolution Would Be a Waste of Time Because SBC Plans to Revise its Proposed Amendment "In the Near Future"

It would be premature to initiate negotiations or formal dispute resolution since SBC's March 11 letter advises that it will propose yet another replacement TRO amendment "in the near future" to incorporate the impact of *USTA II*. SBC would be asking the states[4] to arbitrate based on a proposal that SBC gave CLECs only a week to review, and which SBC has indicated will be superseded shortly after the dispute resolution was initiated. None of the thirteen state commissions are likely to appreciate such a wasteful use of their limited time and resources.

Moreover, CLECs are unable to negotiate constructively with SBC when SBC disclaims its own proposal and intends to replace it with an unknown new set of terms. For a CLEC to invoke dispute resolution of these issues, it would need to describe SBC's position on the issues to the state commissions, and yet SBC explains that until it releases its new proposal, "CLECs should not represent any SBC position or language proposal presented prior to the release of USTA as a complete or accurate presentation of SBC's position or language proposal." In order to avoid wasting the time of CLECs and the state commissions, SBC may not petition for dispute resolution until after it has presented its "complete and accurate presentation" of its proposal to CLECs for negotiation, and then actually pursued negotiation in good faith as required by the parties' interconnection agreements.

IV. TRO Amendments Need Not be Negotiated Where Replacement Agreements are Currently Being Arbitrated

Where new interconnection agreement arbitrations are now pending, such as in the generic mega-arbitration in Texas, it would be inefficient and perhaps unwelcome to ask state commissions to simultaneously arbitrate amendments to terminated (but temporarily still-effective) agreements. In the already-ongoing proceedings, SBC and CLECs are able to advocate their positions with respect to the changes in law as they will be applied in the new interconnection agreements. Therefore, it should not be necessary to separately negotiate the "Lawful UNE Amendment" or subsequent proposed amendments in these circumstances.

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[2] *See, e.g.*, interconnection agreements between Ameritech-Michigan and Mpower and DSLnet at §§ 10.2, 10.3.

[3] *See, e.g.*, interconnection agreements between Ameritech-Michigan and ACN and LDMI at §§ 29.3, 28.3. Under such agreements, the significant portions of the TRO that remain subject to appeal at this time would not be a part of any change-of-law negotiations until they became unappealable.

[4] Or other fora, as permitted by the Agreements.

V. *USTA II* Does Not "Eliminate" Any UNEs

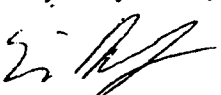
Finally, SBC is wrong in contending that "[a]bsent a rehearing or grant of *certiorari* by the U.S. Supreme Court resulting in a different decision, the effect of the court's decision is the ultimate elimination of certain legal unbundling obligations." The D.C. Circuit does not have the "ultimate" authority over any part of the 1996 Act. At most, if it ever becomes effective, *USTA II* would vacate rules and remand certain issues to the FCC, but would not necessarily preclude the FCC from adopting new unbundling regulations that are at least as expansive as those set forth in the parties' interconnection agreements. Furthermore, even if *USTA II* becomes effective and no replacement rules from the FCC have been adopted, the unbundling policy and requirements set forth by Congress remain clear and effective under the statutory requirements of Sections 251 and 271. In the absence of implementing regulations from the FCC, states would be the arbiters of which UNEs must be provided as part of Section 252 proceedings. This they have already done by approving the existing interconnection agreements. Thus, regardless of whether any of the parties' agreements would deem an effective *USTA II* as a change of law, there would be no resulting changes to the parties' agreements for a state commission to implement at this time.

VI. Conclusion

CLECs are prepared to negotiate in good faith with SBC once SBC's anticipated new proposal is ready, subject to the terms of their Agreements. For the reasons set forth herein, however, we urge SBC not to act precipitously and in contravention of the interconnection agreements by petitioning for dispute resolution based on your proposed "Lawful UNE Amendment," for which there has not been a reasonable opportunity for negotiation and which you have stated you will soon replace.

In the interim, we would be pleased to discuss these matters further with you at any time.

Very Truly Yours,



Russell M. Blau
Eric J. Branfman
Richard M. Rindler

Exhibit 2

Correspondence Related to SBC's USTA II Amendment

A: SBC Request to CLECs to Execute an USTA II Amendment, July 13, 2004

B: Sample CLEC Response Requesting to Defer Negotiations Until Release of FCC's Forthcoming Interim Order, August 3, 2004

SBC did not respond to the August 3 letters.

SBC Telecommunications, Inc.
Four SBC Plaza, 9th Floor
311 S. Akard
Dallas, TX 75202-5398

July 13, 2004

Bruce Bennett
Vice Pres-External Affairs
CoreComm Newco, Inc.
70 W. Hubbard St.
Suite 410
Chicago, IL 60610

Re: Notice of Issuance of a Post-*USTA II* Amendment to Existing Interconnection Agreement(s)

Dear Bruce Bennett:

As you know, on June 16, 2004, the D.C. Circuit's mandate issued in *United States Telecom Association v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004) ("*USTA II*"). Among other things, the Court vacated the FCC's unbundling rules relative to mass market local switching, DS1 and DS3 loops, DS1 and DS3 transport and dark fiber loop and transport. Here's how we intend to comply with the mandate and ensure that our existing, effective interconnection agreements are conformed to current governing law.

Enclosed is a Post-*USTA II* Amendment. As an initial matter, it will serve to bring your interconnection agreement(s) into conformity with the *USTA II* decision as to

1) switching,
2) DS1 and DS3 loops,
3) DS1 and DS3 transport, and
4) dark fiber loop and transport

This amendment simply implements the D.C. Circuit's *USTA II* decision and modifies your interconnection agreement(s) to reflect the fact that the FCC's rules requiring that these network elements be made available are vacated, and thus the affected elements are no longer available as UNEs under your agreement(s). Enclosed you will find a copy of the non- signature-ready Post-*USTA II* Amendment, and an amendment request form which can be faxed to the number at the top of the form. Upon SBC's receipt of your completed request form, a signature-ready amendment will be prepared and sent to you. Because our Post-*USTA II* Amendment simply implements the law as reflected in the *USTA II* decision, there is no need for negotiations related to this amendment. If you disagree, please contact us immediately.

As you are already aware, SBC has committed to the FCC to continue to provide the mass market UNE-P (1-3 voice grade lines), DS1 and DS3 loops dedicated to a single customer, and DS1 and DS3 transport between SBC central offices, and to not unilaterally increase the applicable state-approved prices for these facilities at least through the end of 2004. We intend to abide by that commitment, notwithstanding the amendment of your interconnection agreement(s) to conform with the *USTA II* decision outlined above.

Previously, as part of a separate process to bring your interconnection agreement(s) into conformity with *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*") and the FCC's Triennial Review Order ("TRO"), we provided you with proposed conforming contract language, including our "Lawful UNE" Amendment language. To the extent our companies are already engaged in negotiations and/or other activities, including dispute resolution proceedings, to conform your interconnection agreement(s) to the *USTA I* decision and TRO, SBC will continue to pursue amendment language pursuant to *USTA I* and those portion of the TRO that were unaffected by *USTA II*. Accordingly, the Post-*USTA II* Amendment we provide you with this letter is independent of that process and supplements, but does not supplant, that process or that previously-provided language.

Nothing set forth in this letter or our proposed language waives or otherwise limits our ability to seek any other relief that might be available under any legal rulings, including but not limited to *USTA I*, TRO or *USTA II*, and including any rights SBC may have arising from the federal courts' determination that certain of the FCC's unbundling rules were never lawful. In addition, SBC expressly reserves all rights to pursue additional relief, including but not limited to, seeking modification of existing, effective contracts to include additional modifications justified by *USTA I*, TRO or *USTA II*.

Please contact your assigned account manager to initiate commercial agreement negotiations, or if you have any questions or need further information.

Sincerely,

Notices Manager

POST-USTA II AMENDMENT TO INTERCONNECTION AGREEMENT BETWEEN SBC ILEC d/b/a SBC STATE AND CLEC

This is a Post-USTA II Amendment (the "Amendment") to the Interconnection Agreement by and between SBC ILEC d/b/a SBC State[1] ("SBC State") and CLEC ("CLEC") (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its mandate on June 16, 2004;

WHEREAS, the *USTA II* decision vacated certain of the Federal Communications Commission ("FCC") rules requiring the provision of certain unbundled network elements, and therefore, SBC State is no longer legally obligated to provide these unbundled network elements to CLEC under federal law;

WHEREAS, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to ensure that the obligations related to unbundled network elements remain consistent with applicable law; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. Pursuant to the decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004), effective immediately, SBC State is not required, pursuant to this Agreement, to provide to CLEC, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality: switching (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1, DS3 and dark fiber dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1, DS3 and dark fiber loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(6),(7)); provided, however, that as to switching for customer locations with 1 to 3 lines (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), this provision shall become effective on and after January 1, 2005.
2. [ADD CURRENT RESERVATION OF RIGHTS AMENDMENT LANGUAGE.]
3. ALL STATES OTHER THAN OH: The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the LIST STATE COMMISSION and shall become effective ten (10) days following the date upon which such Commission approves this amendment under Section 252(e) of the Act or, absent such Commission approval, the date this amendment is deemed approved by operation of law. FOR OHIO ONLY: The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Amendment shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

[1] Add appropriate state-specific footnote from end of Amendment template.

TO: **CONTRACT MANAGEMENT**
FOUR SBC PLAZA, 9TH FLOOR
DALLAS, TX 75202

1—800-404-4548

FROM: _____

FAX: _____ TELEPHONE: _____

E-MAIL: _____

Amendment – USTA II Mandate Request Form

Amendment Preparation Information

Carrier Legal/Certified Name(s)	
State(s)	
Official Notice Name	
Official Notice Title	
Official Notice Address (cannot be PO Box) Suite/Room Number	
Official Notice City/State/Zip Code	
Official Notice Telephone Number	
Official Notice Fax Number	
Official Notice E-mail Address	
Type of Agreement to be amended	
AECN/OCN	
ACNA	

Please note that the failure to provide accurate and complete information may result in return of the form to you and a delay in processing your request.

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August 3, 2004

VIA OVERNIGHT MAIL

Notices Manager
SBC Telecommunications, Inc.
Four SBC Plaza, 9th Floor
311 S. Akard
Dallas, Texas 75202-5398

Re: DSLnet Communications, LLC; Response to Post-*USTA II* Amendment Notice

On behalf of DSLnet Communications, LLC ("DSLnet") this letter is in response to the SBC notice letter dated July 16, 2004, in which SBC provided notice that SBC seeks to amend its interconnection agreements with DSLnet so that SBC can cease providing unbundled switching and DS1, DS3 and dark fiber loops and transport. SBC has characterized this request as a simple implementation of law and finds that "there is no need for negotiations related to this amendment." The purpose of this letter is to provide notice that, in accordance with the terms of our interconnection agreements with SBC, DSLnet disputes SBC's interpretation of the state of applicable law and hereby invokes its right to negotiate the terms of any proposed amendment.

In the *Triennial Review Order*, the FCC ordered the parties to negotiate terms for the transition to the regime established by the Order. DSLnet is committed to negotiate in good faith to implement any changes to the parties' interconnection agreements that are necessitated by a change of law. However, the negotiated amendment process is a necessary prerequisite, among other reasons, to assure that any changes do in fact conform to applicable law.

As an initial matter, under some interconnection agreements, SBC's proposal is premature. Some agreements provide for a specified period of negotiations that start only after a change in law is "legally binding"; *i.e.*, nonappealable. Because *USTA II* remains subject to pending petitions for certiorari before the Supreme Court, the change of law provisions of these agreements have not been triggered as of the date of this letter.

In any event, DSLnet does not agree with SBC's suggestion that its proposal, even when ripe, is ready for execution without any negotiation. In that regard, we note that SBC has an obligation to provide UNEs under authority that is independent of the *Triennial Review Order*.

First, *USTA II* did not vacate the Commission's rules for high-capacity loops.[1] Second, SBC remains obligated to provide unbundled switching and transport under the terms of the parties' pursuant to the FCC's SBC/Ameritech Merger Conditions,[2] and in some cases, state law, regulation, tariff and/or order. Third, SBC is required in most of its region to continue to provide loops, transport and switching pursuant to its Section 271 obligations and commitments. Fourth, *USTA II* did not find that any of the vacated UNEs were not or could not be required by Section 251. Even SBC's own filings in various proceedings recognize that CLECs are impaired without access to at least some of the UNEs that SBC's proposed amendment would eliminate. Thus, SBC's proposal to eliminate these UNEs across the board would be an unlawful interpretation of section 251 that could not be approved by a state commission under the terms of Section 252(e)(2)(B).

Finally, as you know, the FCC is soon expected to release an interim order that may significantly affect the terms of any proposed amendment. While we look forward to constructive engagement with SBC, we therefore propose that the parties defer negotiation of SBC's proposal until all parties have had the opportunity to consider the new FCC interim order once it is released. If you wish to discuss this matter further, please contact Paul Hudson at the above address, or at 202-945-6940.

Very truly yours,

Paul B. Hudson
Harry N. Malone

Counsel to DSLnet Communications, LLC.

cc: Schula Hobbs, DSLnet
Jodi Dottori, DSLnet

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1 *See USTA II* at 594. ("To summarize: We vacate the Commission's subdelegation to state commissions of decision-making authority over impairment determinations, which in the context of this Order applies to the subdelegation scheme established for mass market switching and certain dedicated transport elements (DS1, DS3, and dark fiber). We also vacate and remand the Commission's nationwide impairment determinations with respect to *these elements*.") (emphasis added). The loop rules may be revised in the FCC's upcoming remand proceeding, but they remain in effect.

2 Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 App. C para. 53 (1999) ("*SBC-Ameritech Merger Order*"). Unlike other merger conditions, these have not expired, instead remaining applicable pending a final and nonappealable order in the UNE Remand proceeding. Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket No. 98-141, *Memorandum Opinion and Order*, 17 FCC Rcd 19595 n. 7 (2002).

Exhibit 3

Correspondence Related to SBC's Interim Order/USTA II Amendment

SBC's Interim Order/USTA II Amendment was first presented to Respondents by SBC as an Exhibit to SBC Ohio's Complaint, which was filed September 21, 2004.

A: Swidler Berlin Shereff Friedman response to SBC, September 24, 2004

B: Kellogg Huber (on behalf of SBC) response to Swidler letter, September 28, 2004

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September 24, 2004

VIA FACSIMILE AND OVERNIGHT DELIVERY

Mr. James Ellis
Senior Vice President and General Counsel
SBC Communications, Inc.
175 East Houston Street
San Antonio, TX 78205

Dear Mr. Ellis:

We have learned from our clients that SBC has filed complaints recently in Ohio and Nevada declaring that negotiations to implement the *Triennial Review Order* are at an "impasse" and requesting that the state commissions order CLECs to sign a new SBC proposed amendment. We were taken aback by these complaints, and are writing you today to urge that the parties engage in further attempts to resolve their disputes before SBC files similar actions in other states.

In early August 2004, we wrote letters to SBC on behalf of several clients stating that "While we look forward to constructive engagement with SBC, we [] propose that the parties defer negotiation of SBC's proposal until all parties have had the opportunity to consider the new FCC interim order once it is released." Predictably, the FCC *Interim Order* did in fact render prior proposals outdated because it requires that any new unbundling amendments include new terms that incorporate the standstill and transition terms of the new order. SBC did not respond to our August letters, and we have not pressed the point because we believe, as does the FCC and the Texas Public Utilities Commission that arbitration of unbundling-related contract amendments at this time "would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible."[1] While we expected that you might prepare a new amendment that

[1] *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313 & 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, ¶ 17 (rel. August 20, 2004); *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821, Order Abating Track 2 (Tex. P.U.C. Sept. 9, 2004).

incorporates the *Interim Order*, we did not expect to see that proposal for the first time in a complaint filed against our clients for their supposed refusal to negotiate an amendment they had never seen.

Nonetheless, if SBC desires to move forward despite the likelihood that current efforts will become moot before they are finalized, as is now apparent, our clients will negotiate in good faith as required by the Act. Therefore, please let us know which interconnection agreements outside of Ohio and Nevada you currently seek to amend, so that we may coordinate with our clients appropriately and arrange to schedule negotiation sessions with the appropriate SBC negotiator.[2] We believe that most state commissions would share our preference that the parties first attempt to negotiate SBC's new proposal before resorting to litigation.

Finally, if despite our offer SBC chooses to pursue relief from state commissions, we ask that you e-mail copies to us so that we can assure that our clients respond to the commissions in a timely manner.

Very truly yours,

Russell M. Blau
Harry N. Malone
Paul B. Hudson

[2] As we have previously noted, negotiation of a TRO amendment under some interconnection agreements would be premature. Some agreements provide for a specified period of negotiations that start only after a change in law is "legally binding"; *i.e.*, nonappealable. Because *USTA II* remains subject to pending petitions for certiorari before the Supreme Court, the change of law provisions of these agreements have not been triggered as of the date of this letter.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

September 28, 2004

Via Hand Delivery

Mr. Russell M. Blau
Mr. Harry N. Malone
Mr. Paul B. Hudson
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Washington, DC 20007-5116

Dear Messrs. Blau, Malone, and Hudson:

I am writing on behalf of SBC Communications Inc. ("SBC"), in response to your letter of September 24, 2004 to Jim Ellis regarding SBC's recent filings to obtain state commission approval of revisions to its interconnection agreements to reflect governing law. As an initial matter, since your letter failed specifically to identify which CLECs you were writing on behalf of, SBC is unable to respond to your suggestion that "the parties" undertake "further attempts to resolve their disputes." More importantly, because your letter reflects a misunderstanding of SBC's position, I write to make that position abundantly clear.

The bulk of the FCC unbundling rules on which SBC's interconnection agreements with CLECs were based have now been ruled unlawful and vacated on three separate occasions. Other such rules were eliminated by the FCC itself in the Triennial Review Order, in rulings that were upheld by the D.C. Circuit. Furthermore, the FCC has stated, both in the Interim Order your letter references and in its opposition to USTA's petition for mandamus challenging that order, that ILECs can and should initiate change of law proceedings so as to ensure the prompt implementation of the forthcoming permanent rules. As the FCC put it less than two weeks ago, in the wake of the Interim Order, "ILECS are free to initiate 'change of law proceedings that presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport'" and that will "go forward even before the FCC promulgates its final rules on

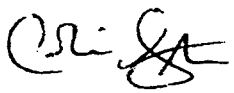
remand," thus permitting the FCC's forthcoming permanent rules "'to take effect quickly'" upon their issuance.[1]

Since the FCC released the Triennial Review Order, SBC has been attempting to amend its interconnection agreements to conform to governing law, with only limited success. The majority of CLECs with which SBC has interconnection agreements have chosen to make no constructive response to SBC's efforts to initiate negotiations or to its proposed modified contract language. For example, your August letters are no more than a rejection of SBC's efforts and an attempt to delay the process of updating agreements to reflect governing law. And, while SBC has repeatedly and publicly stated its willingness to engage in meaningful commercial negotiations – in order to secure the much needed certainty that has proven elusive in the regulatory arena – to date only a handful of CLECs have engaged in such negotiations.

As a result of these facts – and in light of the FCC's direct and express invitation to initiate proceedings before state commissions – SBC filed the petitions you reference in your letter. A careful review of SBC's proposed contract amendment language filed with those petitions reveals that the amendment is short, simple, and substantively the same as the amendments SBC previously provided to its CLEC customers. In addition, SBC's proposed amendment language takes into account the interim requirements set forth in the Interim Order. SBC's objective in these proceedings is quite simple and utterly unobjectionable: to conform its existing section 252 agreements to existing and binding federal law. Further delay in reaching that goal cannot and should not be countenanced by you or your clients, nor by the state commissions. Of course, consistent with its oft-stated position that these issues can best be resolved outside the scope of sections 251 and 252, SBC at all times remains willing to engage in productive and meaningful commercial negotiations. If your clients wish to engage in such negotiations, they should contact their SBC account managers.

Finally, concerning your request for copies of pleadings, SBC will follow each state commission's procedural requirements for service of process.

Yours truly,



Colin S. Stretch

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[1] Opposition of Respondents to Petition for a Writ of Mandamus at 10, *United States Telecom Ass'n v. FCC*, Nos. 00-1012, *et al.* (D.C. Cir. filed Sept. 16, 2004) (quoting Order and Notice of Proposed Rulemaking ¶¶ 22-23, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (FCC rel. Aug. 20, 2004)).