

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

This Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") is being entered into by and between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and Sage Telecom, Inc. ("CLEC", as further defined below).

This Amendment is applicable to the current and any future Interconnection Agreements between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, and CLEC and any of its current and future Affiliates which are a certified/certificated provider of local exchange telecommunications services (as used herein, "CLEC" refers to the above named carrier(s) and such current and future Affiliates), in the State of Missouri from the Amendment Effective Date, through and including July 31, 2011, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) "Most Favored Nation" ("MFN") rights or otherwise. Each of SBC Missouri and CLEC may be referred to individually as "Party," or collectively as the "Parties."

WHEREAS, on December 27, 2001, CLEC filed its Notice of Adoption of the Missouri 271 Interconnection Agreement ("ICA") of Southwestern Bell Telephone Company, now known as SBC Missouri, which became effective upon filing of the Notice of Adoption; and

WHEREAS, the Parties have mutually agreed to amend the current ICA, as well as condition any future interconnection agreements between them on certain provisions contained in this Amendment, and as a result of an Order (as defined in Section 6.2 herein) of the Missouri Public Service Commission ("Commission").

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

1. Scope of Amendment

- 1.1 The Parties agree that this Amendment will act to supersede, amend and modify the applicable provisions currently contained in the ICA. This Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, and shall supersede, amend, and modify the applicable provisions of, any future interconnection agreement(s) between the Parties for the period from the Amendment Effective Date, up through and including July 31, 2011, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) MFN rights or otherwise.
- 1.2 Any inconsistencies between the provisions of this Amendment and other provisions of the current ICA or future interconnection agreement(s) described above between SBC Missouri and CLEC for the period from the Amendment Effective Date, through and including July 31, 2011, will be governed by the provisions of this Amendment, unless this Amendment is specifically and expressly superseded by a future amendment between the Parties that references this Amendment, and then only to the extent of any such future amendment.
- 1.3 If the underlying ICA or any future interconnection agreement(s) expire(s) sooner than July 31, 2011, the Parties agree that this Amendment shall not extend or otherwise alter the term and termination rights of the underlying ICA or any future interconnection agreement(s), but instead, this Amendment will be incorporated into any successor interconnection agreement(s) between the Parties through July 31, 2011. Also, the Parties recognize that an MFN interconnection agreement pursuant to 47 U.S.C. § 252 may receive quicker Commission approval than the negotiated Amendment which will be affixed to that interconnection agreement. To the extent that the date of Commission approval of the underlying MFN interconnection agreement precedes the date of Commission approval of the Amendment, the Parties agree that the rates, terms and conditions of the Amendment will, upon Commission approval of the Amendment, apply retroactively to the date of such Commission approval of the underlying

interconnection agreement so that the rates, terms and conditions contained herein will apply uninterrupted from the Amendment Effective Date, up through and including July 31, 2011.

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

2. LWC Agreement

- 2.1 Subject to Sections 2.3 and 4 hereof, attached and incorporated herein as an exhibit is the "Private Commercial Agreement for Local Wholesale Complete" (including its attachments) between SBC Missouri and other SBC ILECs and CLEC ("LWC Agreement"), and one amendment to that LWC Agreement ("LWC Amendment") (collectively, the LWC Agreement and the LWC Amendment are referred to herein as the "LWC Documents").
 - 2.1.1 In the event that, as a result of an action by the Federal Communications Commission or a court of competent jurisdiction, the LWC Documents need not have been filed with or approved by the Commission pursuant to 47 U.S.C. § 252, the LWC Documents shall be automatically deemed deleted from this Amendment, as of the effective date of such action. Such deletion shall not in any way affect the effectiveness and enforceability of the LWC Documents between SBC Missouri and CLEC, in accordance with its terms.
- 2.2 The LWC Agreement contains provisions that may render it inoperative in one or more states, including in Missouri (e.g., under Section 18 of the LWC Agreement). Should the LWC Agreement become inoperative (and thus make the LWC Amendments inoperative as well) in the State of Missouri, this Amendment shall immediately become null and void for all purposes in the State of Missouri and the Parties agree to submit a further amendment immediately to the Commission so reflecting this fact. Such further amendment will be effective retroactively to the time that the LWC Agreement became inoperative. In addition, in the event that at the time that the LWC Agreement becomes inoperative in the State of Missouri, CLEC does not have in effect any agreement in such state pursuant to 47 U.S.C. § 252, CLEC may adopt such agreement pursuant to § 252(i) or may purchase under tariff or SGAT or enter into any other arrangement of CLEC's choosing available to it under 47 U.S.C. § 251 and/or 252 at that time, and such arrangement will be deemed effective as of the time that the LWC Agreement became inoperative in the State of Missouri and SBC Missouri shall cooperate fully in CLEC's exercise of its rights under this Section, provided that the Parties shall have no retroactive monetary true-up compensation obligation to each other for the provision of products and other offerings from the date from the Amendment Effective Date until the date that the LWC Agreement became inoperative.

2.2.1 If the LWC agreement is terminated or invalidated under Section 18.7 of the LWC Agreement, then Section 18.7.3 of the LWC Agreement shall control to the extent inconsistent with Section 2.2.

2.3 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to the Order and any remands thereof, including its rights of appeal and/or review. This Amendment does not in any way prohibit, limit, or otherwise affect either Party from taking any position with respect to the Order, or from raising and pursuing its rights, remedies and arguments with respect to the Order or any other Commission order or any issue or subject addressed or implicated therein, or any legislative, regulatory, administrative or judicial action with respect to any of the foregoing.

3. UNEs

3.1 As of the Amendment Effective Date, any and all of the terms and conditions, including pricing, specifically relating to unbundled local switching, unbundled tandem switching, and unbundled shared transport (however denominated by SBC Missouri or in any ICA(s)) are hereby deleted from the current ICA or future interconnection agreement(s) described above for the period from the Amendment Effective Date, through and including July 31, 2011. CLEC shall not use, request, order, or otherwise authorize or permit the use of any SBC Missouri-provided unbundled local switching or unbundled shared transport in any of its serving arrangements.

3.2 As of the Amendment Effective Date and for SBC Missouri, the monthly recurring charge for an unbundled 2-wire analog loop (however denominated in Missouri, or in the current ICA or any future ICA(s)) (including a facility that is being used to provide the equivalent transmission capacity) shall be \$20.00 under the current ICA or future interconnection agreement(s) described above for the period from the Amendment Effective Date through and including July 31, 2011.

3.3 As of the Amendment Effective Date and with respect to SBC Missouri, CLEC hereby irrevocably waives any right it may have to Commingle any SBC Missouri-product that is not contained in an ICA(s) or tariff that exists as of March 31, 2004 ("Commercial Product"), and shall not request, order, authorize, or otherwise permit any Commercial Product it purchases to be Commingled.

3.3.1 "Commingling" means, in this context, the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to any Commercial Product or the combining of a UNE, or a combination of UNEs, with any Commercial Product. "Commingle" means the act of commingling.

3.3.2 "Commingled Arrangement" means the arrangement created by Commingling.

4. Reciprocal Compensation

4.1 Notwithstanding anything contrary in the current ICA or future interconnection agreement(s) described herein, as of the Amendment Effective Date, all Section 251(b)(5) Traffic and ISP-bound Traffic exchanged between the Parties shall be subject to a bill and keep arrangement if such Traffic originates from and/or terminates to an end office switch used by CLEC when SBC Missouri is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC.

4.1.1 "Section 251(b)(5)" is telecommunications traffic that is originated by an end user of one Party and terminated to the end user of the other Party that are (i) both physically located within the same SBC Missouri's Local Exchange Areas as defined by SBC Missouri's Local (or General) Exchange Tariff or (ii) both physically located within neighboring Missouri Local Exchange Areas that are within the same common mandatory local calling area.

4.1.2 "ISP-bound Traffic" is traffic that is originated by an end user(s) of one Party and terminated to an ISP serviced by the other Party that are (i) both physically located within the same SBC Missouri's Local Exchange Areas as defined by the SBC Missouri's Local (or General) Exchange

Tariff or (ii) both physically located within neighboring Missouri Local Exchange Areas that are within the same common mandatory local calling area.

- 4.2 SBC Missouri has offered to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan ("FCC Plan") pursuant to the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order"), and the Parties hereby agree that the rates, terms and conditions set forth in the FCC Plan will not apply to any Section 251(b)(5) Traffic and/or ISP-Bound Traffic exchanged between the Parties if such Traffic originates from and/or terminates to an end office switch used by CLEC when SBC Missouri is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC. The traffic exchanged between the Parties that originates from and/or terminates to an end office switch used by CLEC when SBC Missouri is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC, shall not be included in any calculation under the FCC Plan for determining growth caps or determining amounts of traffic to be compensated, if any, at the FCC's interim rates as set forth in the FCC's ISP Compensation Order.

5. Intervening Law/Change of Law

- 5.1 In entering into this Amendment and carrying out the provisions herein, and except as may be inconsistent with Sections 3 and 4 of this Amendment and the term of its effectiveness, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into the current ICA or which may be the subject of further government review: the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al ("USTA") v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in *USTA v. FCC*, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in the current ICA (including this and any other amendments to any of them), SBC Missouri shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in Commingled Arrangements beyond those required by the Telecommunications Act of 1996 ("Act"), including the lawful and effective FCC rules and associated FCC and judicial orders. Further, unless subsequently agreed to in writing between the Parties, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Amendment or the LWC Documents constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from*

Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the current ICA and this Amendment and except to the extent that SBC Missouri has adopted the FCC ISP terminating compensation plan ("FCC Plan") in Missouri, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into the current ICA, these rights also include but are not limited to SBC Missouri's right to exercise its option at any time to adopt on a date specified by SBC Missouri the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to the current ICA except Section 4 of this Amendment shall apply with respect to Traffic that originates from and/or terminates to an end office switch used by CLEC when SBC Missouri is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the current ICA and this Amendment (excluding the LWC Documents) and/or otherwise affects the rights or obligations of either Party that are addressed by the current ICA and this Amendment (excluding the LWC Documents), specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the current ICA. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in the current ICA or future interconnection agreement(s).

- 5.2 In the event that any intervening law rights in the current ICA or any future interconnection agreement(s) are inconsistent or conflict with this Section 5, Intervening Law/Change of Law, for the time period from the Amendment Effective Date, up through and including July 31, 2011, this Section 5, Intervening Law/Change of Law, shall supersede and control as to any such inconsistency and/or conflict(s) as to all rates, terms and conditions in the current ICA and any future interconnection agreement(s) for such time period.
- 5.3 Notwithstanding anything else herein, during the period from the Amendment Effective Date, up through and including July 31, 2011, the Parties waive any rights they may have under the Intervening Law/Change of Law provisions in this Amendment, the Parties' current ICA or any future interconnection agreement(s) to which this Amendment is added, or any other amendments thereto, with respect to the matters that are subject to this Amendment. The Parties specifically acknowledge their awareness of various pending judicial and regulatory actions which may affect the nature and treatment of the reciprocal compensation and unbundled network elements addressed in this Amendment. Each Party specifically acknowledges that this Amendment is intended to be a binding agreement, without regard to the standards set forth in subsections (b) and (c) of Section 251 of the Act, and each Party further acknowledges that this Amendment is intended to and shall remain unaffected by and survive any regulatory, legislative or judicial actions which may affect any of the matters set forth herein during the period from the Amendment Effective Date, up through and including July 31, 2011 including, without limitation, the United States Court of Appeals for the District Court of Columbia's decision in USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I") and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"), and the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36). Except as set forth herein, during the time period from the Amendment Effective Date, up through and including July 31, 2011, each Party shall otherwise have full intervening law rights under Section 5.1 of this Amendment and any intervening law rights in

the underlying ICA or future interconnection agreement(s), and may invoke such intervening law/change in law rights as to any provisions in such ICA or future interconnection agreement(s) (including any separate amendments) impacted by any regulatory, legislative or judicial action.

- 5.4 The LWC Documents are not subject to Sections 5.1-5.3, inclusive, hereof, nor are the LWC Documents subject to any "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions in the current ICA or future interconnection agreement(s)."

6. Amendment Effective Date

- 6.1 The "Amendment Effective Date" shall be ten (10) calendar days after the Commission has approved this Amendment under Section 252(e) of the Act or, absent such Commission approval, the date this Amendment is deemed approved under Section 252(e)(4) of the Act.¹ In the event that after the Amendment Effective Date all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the Commission, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the Commission.
- 6.2 As of the Amendment Effective Date, this Amendment wholly replaces, for the State of Missouri only, that certain "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" filed with the Commission on May 4, 2004 (and subsequently not approved by the Commission by order dated July 27, 2004 ("Order")) by and between the SBC Missouri and certain other SBC ILECs (as defined therein), and Sage Telecom, Inc. and Sage Telecom of Texas, L.P. ("Replaced Amendment"), with the Replaced Amendment being void and of no further effect with respect to Missouri, including with respect to the period between July 1, 2004, and the Amendment Effective Date, inclusive.
- 6.3 Notwithstanding Section 7.6, the effective date of the LWC Documents for the State of Missouri shall be the same date as the Amendment Effective Date. Notwithstanding Section 7.6, the termination and/or expiration of the LWC Documents shall be controlled by the provisions set forth in the LWC Agreement.

7. Additional Terms and Conditions

- 7.1 This Amendment contains provisions that have been negotiated as part of an entire Amendment and integrated with each other in such a manner that each provision is material to every other provision.
- 7.2 The Parties agree that each and every rate, term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in this Amendment. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on a Missouri-specific basis due to the Order, and included the totality of rates, terms and conditions listed herein, and that it is an indivisible whole, intended to bind SBC Missouri and CLEC (including, as defined, its current and future Affiliates) under the current ICA(s) and any future interconnection agreement(s), unless the Parties expressly agree otherwise in accordance with Section 1.2 of this Amendment.
- 7.3 Except as specifically modified by this Amendment with respect to their mutual obligations herein and subject to Section 5, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

¹ Notwithstanding anything to the contrary in the Agreement (including, as applicable, this Amendment and any other amendments to the Agreement) (collectively for this footnote, "Agreement"), the provisions hereof subsequently adopted ("MFN Provisions") by any other telecommunications carrier ("Adopting CLEC") from this Agreement (including without limitation this Amendment) shall only apply prospectively beginning from the date that the MFN provisions become effective between SBC Missouri and the Adopting CLEC following the date the Commission approves or is deemed to have approved the Adopting CLEC's MFN Provisions as between the SBC Missouri and Adopting CLEC ("Section 252(i) Effective Date"). In no event shall the MFN Provisions apply retroactively prior to the effective date of the adoption under Section 252(i) or the Section 252(i) Effective Date.

- 7.4 This Amendment is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 7.5 The terms contained in this Amendment constitute the agreement with regard to the superseding, modification, and amendment of the ICA and incorporation into future interconnection agreement(s) through July 31, 2011, and shall be interpreted solely in accordance with their own terms.
- 7.6 To the extent there is a conflict or inconsistency between the provisions of this Amendment and the LWC Documents (including all of their accompanying Appendices), the provisions of this Amendment shall control in the State of Missouri and apply but only to the extent of such conflict or inconsistency. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement but excluding the LWC Documents or this Amendment), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. To the extent there is a conflict or inconsistency between the provisions of the LWC Documents and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement but excluding this Amendment), the provisions of the LWC Documents shall control and apply but only to the extent of such conflict or inconsistency. As used in this Section, "this Amendment" excludes the LWC Documents.
- 7.7 The headings of certain sections of this Amendment are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Amendment.
- 7.8 This Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment was executed in duplicate on this 4th day of Feb., 2005.

Sage Telecom, Inc.

Southwestern Bell Telephone, L.P. d/b/a SBC
Missouri, by SBC Telecommunications, L.L.C., its
authorized agent

Signature: Robert W. McCausland

Signature: Mike Auinbauh

Name: Robert W. McCausland

Name: Mike Auinbauh

Title: VP, Regulatory Affairs

Title: *For/* President-Industry Markets and
Diversified Businesses

Date: 2/1/05

Date: FEB 04 2005

FACILITIES-BASED OCN # 9078

ACNA SGZ

AGREED and ACCEPTED as to affect on LWC Agreement

Sage Telecom of Texas, L.P.

Signature: Robert W. McCausland

Name: Robert W. McCausland

Title: VP, Regulatory Affairs

Date: 2/1/05

Exhibit

LWC Documents

PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

between

**Illinois Bell Telephone Company d/b/a SBC Illinois;
Indiana Bell Telephone Company Incorporated d/b/a SBC
Indiana;**

**Michigan Bell Telephone Company d/b/a SBC Michigan;
Nevada Bell Telephone Company d/b/a SBC Nevada;
The Ohio Bell Telephone Company d/b/a SBC Ohio;
Pacific Bell Telephone Company d/b/a SBC California;
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

**SAGE TELECOM, INC.; SAGE TELECOM OF
TEXAS, L.P.**

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PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

This Agreement is entered into by and between SAGE TELECOM, INC. and SAGE Telecom of Texas, L.P. (hereinafter collectively referred to as "SAGE"), and **SBC-13STATE** (as defined herein) (collectively, the "Parties").

WHEREAS, both incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") have been and continue to be subject to significant regulatory and business uncertainties and risks due, in part, to the continuous and laborious cycle of regulatory orders and order-vacating appeals, as has been illustrated with regard to unbundling obligations of ILECs as defined in recent FCC orders under 47 U.S.C. § 251(d)(2), and in the recent decision in USTA v. FCC, No. 00-1012 (U.S.D.C. App. March 2, 2004);

WHEREAS, both Parties wish to enter into a business-to-business relationship on certain matters outside of 47 U.S.C. §§ 251 and 252, in order to minimize those uncertainties and risks;

WHEREAS, both Parties wish to afford consumers the benefits of competition in telecommunications services, including the benefits of technology and service innovation from multiple participants;

WHEREAS, SAGE operates as a retail local exchange service provider in areas where **SBC-13STATE** is the ILEC, and wishes to obtain certain technology packages, operational support capabilities, and certain ancillary services from **SBC-13STATE** as SAGE's preferred network provider in order for SAGE to provide local exchange service;

WHEREAS, **SBC-13STATE** wishes to provide such technology packages, operational support capabilities, and certain ancillary services to SAGE on a wholesale basis, as part of a business-to-business agreement, at prices that are reasonable as determined by voluntary negotiation between the Parties, and on terms that are protective both of the reliability and integrity of **SBC-13STATE**'s network and systems, and also of **SBC-13STATE**'s own ability and economic incentives to provide technology and service innovation to the marketplace;

WHEREAS, both Parties wish to foster efficiencies in their operational interactions associated with the wholesale arrangement, such as order-entry, installation, change orders, maintenance-dispatch, provisioning and transfer of Call Detail Records ("CDRs");

WHEREAS, the Parties agree that maximizing the percentage of inter-company activity that can be fully automated is essential for reducing Operations Costs,

WHEREAS, both Parties recognize that excessive Churn (as defined herein) materially detracts from the economic value available to both participants in the wholesale arrangement, making it more difficult at any given level of wholesale prices for both Parties to optimize their wholesale business relationship;

WHEREAS, each Party wishes to operate separately from the other some of its service offerings and systems involved in services at the retail level, as well as certain other systems involving proprietary technology or software applications, and to keep these systems for the private use of its own retail customers;

WHEREAS, both Parties want to fully explore allowing the efficient integration and/or interoperation of SAGE's technology and systems with the technology packages, operational support capabilities, and certain ancillary services that **SBC-13STATE** is providing pursuant to this Private Commercial Agreement, including the potential access to certain **SBC-13STATE** systems and capabilities that have not been previously offered or tested for interoperability with Foreign networks, all consistent with protecting the reliability and integrity of **SBC-13STATE**'s network and systems;

WHEREAS, the Parties agree that furthering such exploration requires a joint development and/or engineering relationship and agree to explore such potential undertakings, including those that may result in Custom Adjuncts for the exclusive use of SAGE in conjunction with the **SBC-13STATE** offerings under this Private Commercial Agreement;

WHEREAS, the Parties agree that establishing such a joint development and/or engineering relationship and potential undertakings requires the discussion and negotiation of complex, significant matters, including on such issue as designing, engineering, testing, deploying and the operations of such Foreign access or Custom Adjunct capability, as well as the Intellectual Property (as defined herein) issues associated therewith;

WHEREAS, those efforts require the establishment of a Joint Development Project that will remain in place as provided for in this Private Commercial Agreement;

WHEREAS, the Parties wish to undertake periodic reviews of, and improvements in, the management, structuring and automation of wholesale inter-company processes, administrative functions and support capabilities under the auspices of the Joint Development Project established as part of this Private Commercial Agreement;

WHEREAS, in reducing its risk in the current regulatory and litigation environment, and in creating a voluntary business relationship it has determined to be reasonable and beneficial, each Party recognizes there is a real opportunity for an historic agreement; and

WHEREAS, both Parties are willing to agree only on the basis of the entirety of this Private Commercial Agreement being an indivisible whole.

NOW, THEREFORE, the Parties agree by these presents:

1. INTRODUCTION

- 1.1 The Parties understand and agree that this Agreement sets forth the terms and conditions, including prices, under which SBC-13STATE will make available to SAGE "Local Wholesale Complete" or "LWC" within SBC-13STATE's Service Areas, and under which SAGE agrees to purchase all of its requirements for Basic Analog Switching (or a similar circuit switching capability) and/or Basic Analog Loops (or a similar transmission capability) to provide local exchange telecommunications services to Eligible End Users (as defined herein) within those same Service Areas.
- 1.2 The LWC product refers to technology packages, operational support capabilities, and certain ancillary services comprising dial tone capabilities using Basic Analog Switching (as defined herein) cross-connected to a Basic Analog Loop (as defined herein), in conjunction with other network capabilities, provided by SBC-13STATE. Both the Basic Analog Switching and Basic Analog Loop are integral and mandatory parts of LWC, and must be provisioned for each LWC; otherwise, LWC is not available to SAGE.
- 1.3 For the Term (as defined herein) SAGE agrees to use LWC, where and to the extent available, to fulfill all of its retail and wholesale requirements in the provision of wireline local exchange service to Eligible End Users using Basic Analog Switching (or a similar circuit switching capability) and/or Basic Analog Loops (or a similar transmission capability) within the SBC-13STATE Service Areas. By way of example, the foregoing requirements commitment is in lieu of SAGE providing circuit-switched, basic analog local exchange service by using the so-called "Unbundled Network Element Platform" (or "UNE-P"), any Commingled Arrangement involving SBC-13STATE, any resold SBC-13STATE service, any 47 U.S.C. § 271 checklist offering made by SBC-13STATE, any SAGE-provisioned Basic Analog Switching (or a similar circuit switching capability) or any wholesale service/offering using Basic Analog Switching (or a similar circuit switching capability) provided by any non-SBC-13STATE entity. Additionally, SAGE agrees that it will not permit any Affiliate to use LWC, except through the process set forth in Section 1.3.3.
 - 1.3.1 SAGE hereby irrevocably waives any right to purchase, directly or indirectly, any SBC-13STATE-provided unbundled switching, or any SBC-13STATE local switching under 47 U.S.C. § 271, and SAGE shall not use, request, order, or otherwise authorize or permit the use of any SBC-13STATE-provided unbundled switching or any SBC-13STATE local switching under 47 U.S.C. § 271. The foregoing waiver includes any rights it may have in any of the current interconnection agreements (ICAs) or any future interconnection agreement(s), including but not limited to any amendments to either, as well as Sage's rights, and SBC-13STATE's obligations, under 47 U.S.C. § 252(i).
 - 1.3.2 SAGE represents that all of its Affiliates that are engaged in local dialtone services (e.g., wireline local exchange service) in SBC-13STATE Service Areas as of the Effective Date of this Agreement are Parties to this Agreement, and are individually and collectively referred to herein as SAGE.
 - 1.3.3 If, during the Term, of this Agreement, SAGE acquires, is acquired by, merges with or otherwise becomes an Affiliate of any person or entity that provides retail or wholesale wireline local exchange service to end users who are considered "Eligible End Users" under this Agreement using Basic Analog Switching (or a similar circuit switching capability) within the SBC-13STATE Service Areas, including without limitation by purchasing, directly or indirectly, any SBC-13STATE-provided

unbundled switching resembling Basic Analog Switching, and/or any **SBC-13STATE** local switching under 47 U.S.C. § 271 resembling Basic Analog Switching, then, within 120 days of becoming the Affiliate of such person or entity, SAGE will notify **SBC-13STATE** to treat all such switching and loop arrangements of such person or entity which resemble LWC in one of two ways: (i) the switching arrangements are to be converted or migrated to LWC and such person or entity, as a new Affiliate, is incorporated into the full terms of this Agreement; or (ii) the switching arrangements are to be disconnected. Unless the Parties otherwise agree, such conversion, migration, or disconnection shall be completed within 90 days of such SAGE notice. If not completed within 90 days, **SBC-13STATE** may begin on the 91st day applying the then-applicable LWC rates to any remaining basic analog switching with loop arrangements being provided by **SBC-13STATE** and, for any other remaining switching arrangements, the next to the last sentence of this Section 1.3.3 shall be triggered. In addition, the ICA(s) of such Affiliate are to be amended similarly to those of SAGE pursuant to this Agreement. If these conditions are not met, and the conversion, migration, or disconnection of the Affiliate serving arrangements using capabilities resembling Basic Analog Switching does not take place as described, then the provisions of Section 1.3 are deemed to be in a condition of material breach, and the procedures of Section 18.5 may be put into effect. Conversions, migrations, and disconnects pursuant to this Section are not to be included in calculations of Flow Through and Churn.

1.3.4 The failure to abide by this Section 1.3 shall be deemed a material breach of this Agreement, except in any State, if any, where this Agreement has been terminated.

1.4 For the Term, SAGE agrees to (i) a rate for an unbundled 2-wire analog loop (or a facility that is being used to provide the equivalent transmission capacity) equal to those prices noted in the LWC Pricing Schedule (which pricing and commitment shall be included in the Related ICA Amendments); (ii) purchase no fewer than 450,000 LWCALs in each month ("Monthly Minimum"); and (iii) use LWC to meet a Local Ratio of 95% for each Measurement Period during the effectiveness of the Agreement. The "Local Ratio" is defined to be the ratio of the aggregate billing for LWC in a "Measurement Period" (as set forth in Section 7.4) ("LWC Period Total") over the sum of the LWC Period Total and the aggregate billing under the then-applicable interconnection agreement(s) between SAGE and **SBC-13STATE** (excluding any billing for telecommunications services resold pursuant to 47 U.S.C. § 251(c)(4)). The calculation of "Local Ratio" shall not include switching and loop arrangements to be converted, migrated, or disconnected pursuant to the provisions of Section 1.3.3 until the first full Measurement Period following after the 90-day conversion/migration/disconnection period has expired. Any switching and loop arrangements that may not yet be converted to LWC, but to which LWC rates have been applied pursuant to 1.3.3, shall be treated as LWC for the purposes of calculating the Local Ratio.

1.4.1 In the event that SAGE fails to meet the Local Ratio in any Measurement Period, it may avoid being in the material breach of this Agreement by electing one of the following:

1.4.1.1 SAGE shall pay **SBC-13STATE** an amount equal to the amount that the non-resale ICA billing exceeds 5% of the Measurement Period's LWC Period Total, SAGE would have met the Local Ratio, unless the Parties mutually agree to an alternative remedy. By way of illustration, if in a Measurement Period SAGE's LWC Period Total was \$9200 and the non-resale billing under SAGE's then-applicable ICAs was \$800, SAGE would pay \$300 to **SBC-13STATE**; or

1.4.1.2 the LWCAL Base Rate shall be increased for the following Application Period (as set forth in Section 7.4) such that the lump sum is sought to be recovered during that Application Period, based upon the number of LWCALs being purchased by SAGE at the end of that Measurement Period. By way of illustration, if in a Measurement Period SAGE's LWC Period Total was \$9200, the non-resale billing under SAGE's then-applicable ICAs was \$800, and at the end of that same Measurement Period the number of LWCALs in service

was 500, the LWCAL base price would increase by \$0.20 [$\$300/500$ times $1/3$] for the following Application Period.

- 1.4.2 In the event that Section 1.3.3 is triggered and such new SAGE Affiliate converts or migrates its switching arrangements pursuant to 1.3.3(i), the Monthly Minimum will be reset at the end of the sixth month following the month in which the new relationship giving rise to the Affiliate status was formed, to 75% of the LWCALs purchased that sixth month by SAGE and the new Affiliate(s).
- 1.5 For the Term, and except as may be subsequently and expressly agreed in writing, SAGE hereby irrevocably waives any right to Commingle any LWCALs, and shall not request, order, authorize, or otherwise permit any LWCAL it purchases to be Commingled. The foregoing waiver includes any rights it may have in any of the current interconnection agreements (ICAs) or any future interconnection agreement(s), including but not limited to any amendments to either, of SAGE and/or its Affiliates.
- 1.5.1 "Commingling" means, in this context, the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to LWC or the combining of a UNE, or a combination of UNEs, with LWC. "Commingle" means the act of commingling.
- 1.5.2 "Commingled Arrangement" means the arrangement created by Commingling.
- 1.5.3 The foregoing shall not prejudice either Party's position on the issue of whether LWC constitutes facilities or services that SAGE has obtained at wholesale from SBC-13STATE, or whether the FCC's definition of "commingling" found at 47 CFR § 51.5 and/or the "commingling" obligations set forth in 47 CFR § 51.309 or any FCC order applies to LWC.
- 1.6 This Agreement includes certain Appendices and Schedules, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.
- 1.7 This Agreement shall apply between the Parties, and each Party shall be bound to its provisions, in each and every SBC-13STATE State.
- 1.8 LWC is available only where capabilities and facilities exist.
- 1.9 The facilities used by SBC-13STATE to provide LWC shall remain the property of SBC-13STATE.
- 1.10 Except for the Service Assurance Plan (see Section 3.1.8 hereof), the Parties understand and agree that no performance measures and remedies shall apply under this Agreement.
- 1.11 The Parties acknowledge and agree that this Agreement, in whole or in part, is not subject to Sections 251/252 of the Act, and is, and was, not subject to negotiation and/or arbitration under Sections 251 and/or 252 of the Act.

2. DEFINITIONS

As used in this Agreement, the following terms and phrases shall have the assigned meaning.

- 2.1 "**Act**" means the federal Communications Act of 1934, as amended, including by the Telecommunications Act of 1996.
- 2.2 "**Affiliate**" shall be a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- 2.3 "**Basic Analog Switching**" refers to a circuit-switched, line-side, analog or TDM switch connection available in a Loop Start Signaling configuration (as defined herein, i.e., loop start at the customer's premises but not necessarily at the SBC-13STATE central office) used primarily for switched voice and voice-band data communications, subject to Section 6, Technology Evolution. Expressly excluded from the scope and definition of Basic Analog Switching are Centrex, Centrex-like (and any similar), PBX, payphone (coin), and I/O features/functions/capabilities, as well as trunk ports and DS-1 (and higher capacity) ports used other than as a multiplexing of Basic Analog Loops.

- 2.4 **"Basic Analog Loop"** refers to a transmission facility connecting a distribution frame (or its equivalent) in an SBC-13STATE central office and the loop demarcation point at an Eligible End User's premises, which has an appearance of a 2-Wire analog transmission facility (or a facility that is being used to provide the equivalent transmission capacity, including equivalent voice-band modem-data capabilities) that supports analog, voice-band services within the frequency spectrum of approximately 300 Hz and 3000 Hz, and voice-band modem-data services using the ITU V.92 standard with bi-directional PCM (to the extent and where such supporting capability is available), and employs Loop Start Signaling at the Eligible End User's premises. Basic Analog Loop may refer, as an example, to a hybrid circuit, in which the analog transmission originating from the Eligible End User's premises is converted to a TDM digital format at an RT, FDI, hut, CEV or other SBC-13STATE enclosure for carriage to the SBC-13STATE central office, at which location appropriate digital signaling would be utilized.
- 2.5 **"Business Day"** means Monday through Friday, excluding holidays on which the applicable SBC-13STATE ILEC does not provision new orders for retail telecommunications services. The use of only "day" in this Agreement refers to a calendar day.
- 2.6 **"Churn"** means the fraction, represented as a percentage, whose numerator is equal to the number of SAGE's LWCALs that SAGE disconnects or receives an accurate line loss notification during a month, and whose denominator is equal to the sum of the number of lines in service on the first day of the month plus the number of new lines added during the course of that month.
- 2.7 **"Control"** (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise. For purposes of this Agreement and this definition, "control" shall be deemed to exist if a person or entity owns an equity interest (or the equivalent thereof) or a voting interest of more than 50 percent.
- 2.8 **"Custom Adjunct"** refers to a system or capability of the SBC-13STATE network that has been conceived, developed and/or deployed as a direct result of the Joint Development Project created under this Agreement, and provided by SBC-13STATE for the exclusive use of SAGE for LWC End Users pursuant to this Agreement to the extent permitted by law.
- 2.9 **"Electronic Service Order"** means an electronic service order sent to SBC-13STATE over a standard, computerized SBC-13STATE service order interface such as EDI or LEX.
- 2.10 **"Extended Area Service Traffic"** is traffic exchanged subject to a mandatory local calling area arrangement ordered by the applicable state commission that provides an end user(s) a local calling area beyond their basic local exchange serving area.
- 2.11 **"Flow Through"** is the percentage of Electronic Service Orders in the relevant time period that are completed without manual intervention by SBC-13STATE due to SAGE system limitations or order errors.
- 2.12 **"Foreign"** refers to networks or technologies that are outside the SBC-13STATE networks, and which are allowed to interact with SBC-13STATE only in accordance with approved protocols and/or procedures.
- 2.13 **"Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 2.14 **"IntraLATA Toll"** is defined as traffic between one SBC-13STATE's local calling area to another SBC-13STATE's local calling area within one LATA within the respective state.
- 2.15 **"ISP-Bound Traffic"** is traffic that is originated by an end user(s) of one Party and terminated to an ISP serviced by the other Party that are (i) both physically located within the same SBC-13STATE's Local Exchange Areas as defined by the SBC-13STATE's respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.
- 2.16 **"Joint Development Project"** refers to the work group and its activities devoted to the analysis, development and deployment of technology interoperation between the Parties, as it relates to Foreign

network access, SBC-13STATE function or feature loading and activations, Custom Adjunct solutions, or for such other purposes as the Parties agree to undertake, all pursuant to Section 11 hereof.

- 2.17 "**Local Wholesale Complete**" ("**LWC**") refers collectively to the technology packages, operational support capabilities, and certain ancillary services supporting the provision of local exchange service that are offered by SBC-13STATE under this Agreement.
- 2.18 "**Loop Start Signaling**" refers to loop start signaling at the Eligible End User's side of the Basic Analog Loop. Thus, Loop Start Signaling may refer, as an example, to a hybrid circuit, in which the analog transmission originating from the Eligible End User's premises is converted to a TDM digital format at an RT, FDI, hut, CEV or other SBC-13STATE enclosure for carriage to the SBC-13STATE central office, and which, if entering the SBC-13STATE end office switch digitally, would employ an appropriate digital signaling format, and not loop start signaling, at that central office end of the circuit.
- 2.19 "**LWC Access Line**" ("**LWCAL**") refers to an individual technology package offered by SBC-13STATE which includes a Basic Analog Loop connected with Basic Analog Switching, equipped so that SAGE can provide local exchange dialtone service to a particular LWC End User premises, and is otherwise operational in accordance with the provisions of this Agreement.
- 2.20 "**Measurement Period Churn**" means the simple average of the Churn for the months in that Measurement Period (as defined in Section 7.4).
- 2.21 "**Operations Costs**" refers to the costs borne by both Parties of the wholesale arrangement related to intercompany wholesale operations functions such as order entry, installation, change orders, maintenance-dispatch, provisioning and transfer of Call Detail Records ("CDRs") for billing purposes.
- 2.22 "**Optional Extended Area Service Traffic**" is traffic exchanged subject to an optional local calling area arrangement that permits an end user(s) to choose a local calling area beyond their basic local exchange service area if such end user(s) pays an additional fee.
- 2.23 "**SBC Communications Inc.**" or "**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.
- 2.24 "**SBC CALIFORNIA**" means Pacific Bell Telephone Company d/b/a SBC California.
- 2.25 "**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.
- 2.26 "**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.
- 2.27 "**SBC NEVADA**" means Nevada Bell Telephone Company d/b/a SBC Nevada.
- 2.28 "**SBC OKLAHOMA**" means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma.
- 2.29 "**SBC SOUTHWEST REGION 5-STATE**" means SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas.
- 2.30 "**SBC-2STATE**" means SBC CALIFORNIA and SBC NEVADA.

- 2.31 "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.
- 2.32 "SBC-10STATE" means SBC SOUTHWEST REGION 5-STATE, SBC Illinois, SBC Indiana, SBC Michigan, SBC Ohio and/or SBC Wisconsin.
- 2.33 "SBC-13STATE" means SBC-2STATE, SBC SOUTHWEST REGION 5-STATE, SBC Connecticut, SBC Illinois, SBC Indiana, SBC Michigan, SBC Ohio and/or SBC Wisconsin.
- 2.34 "Local Traffic" is telecommunications traffic that is originated by an end user of one Party and terminated to the end user of the other Party that are (i) both physically located within the same SBC-13STATE's Local Exchange Areas as defined by the SBC-13STATE's respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.
- 2.35 "Service Area" means a geographic area in which SBC-13STATE then serves as the incumbent local exchange carrier.
- 2.36 "TDM" refers to the channelization of digitized voice grade circuits into DS-1 and higher speed transmission signals using time division multiplexing. TDM is used in circuit switching.
- 2.37 "UNE" means an unbundled network element. UNEs are not provided under this Agreement.

3. APPENDICES INCORPORATED BY REFERENCE

- 3.1 Included as integral parts of this Agreement are the following listed appendices, which are attached and incorporated by this reference:
- 3.1.1 800 Database
 - 3.1.2 ABS
 - 3.1.3 LIDB-CNAM / LIDB-AS
 - 3.1.4 OSS
 - 3.1.5 E911/Emergency Services
 - 3.1.6 Basic Analog Switching and Non-Dedicated Transport
 - 3.1.7 Message Recording (DUF)
 - 3.1.8 Service Assurance Plan
 - 3.1.9 Operator Services and Directory Assistance

4. LWC DESCRIPTION

- 4.1 LWC is only available to SAGE for use in providing local exchange telecommunications service to its residential and business and government end users ("Eligible End Users") except where, and only to the extent that, SAGE is required to resell its services under state or federal law. If an Eligible End User is a telecommunications carrier (including SAGE itself) or an enhanced service provider (including Internet service providers), then such Eligible End User will provide written certification to SAGE, with a copy available for SBC-13STATE, that it is using such service exclusively for administrative purposes, and not as an element of any fee-based service offering to its own customers. In no event shall the aggregate LWCALs used by SAGE to provide service to telecommunications carriers (including SAGE itself) and to enhanced service providers exceed 250 LWCALs in any month. Eligible End Users being served by SAGE using LWC are referred to herein as "LWC End Users."
- 4.1.1 The definition of "Eligible End User" excludes those end users that are served by a DS-1 or higher capacity loop at a single location, and those end users that are being served by SAGE at a single location by 5 or more lower capacity loops (i.e., lower than DS-1), provided, however, that any Sage local exchange service end user customer who would otherwise qualify as an Eligible End User

except for the fact that, as of the Effective Date, such End User is being served by SAGE through the use of 5 or more of such lower capacity loops, shall be allowed to convert to LWC at the location and at the number of LWCAL-equivalents. LWC is not available to serve those excluded end users, and SAGE shall not use LWC to serve those excluded end users.

- 4.1.2 LWC may not be used for termination of "pass through" or transit access traffic if such use results in an arrangement that seeks to avoid the appropriate application of switched access charges.

4.2 Each LWCAL includes the following:

- 4.2.1 A Basic Analog Loop connected with Basic Analog Switching.

- 4.2.2 A single NANP telephone number (i.e., NPA-NXX-XXXX) assigned to it, which shall be one either associated with the SBC-13STATE Serving Switch (as defined herein) per the Telcordia LERG (Local Exchange Routing Guide), or ported to the Serving Switch as permitted under local number portability ("LWC Number").

- 4.2.3 One white page directory listing for the LWC Number, inclusion of the LWC Number in SBC-13STATE's Operator Services and Directory Assistance databases, and delivery of appropriate number of Directories to each LWC End User according to SBC-13STATE practices for its own customers in the serving area. See also Operator Services and Directory Assistance Appendix.

4.2.3.1 Additional, foreign, enhanced, non-published, non-listed, and other special white page listings are available at the price set forth in LCW Pricing Schedule.

- 4.2.4 Use of non-dedicated transport for calls originated from the LWCAL that terminate within the local calling scope, any mandatory and optional extended area service calling scope(s) (one-way or two-way), and "1+" intraLATA toll calling scope. All of the foregoing calling scopes shall be determined with respect to SBC-13STATE's retail telecommunications service offerings, the premises of the LWC End User, and the serving SBC-13STATE end office switch providing the Basic Analog Switching used to serve the LWC End User ("Serving Switch").

- 4.2.5 Use of non-dedicated transport for intraLATA and interLATA toll calls terminated to or originating from the LWCAL, for those toll calls that are handed off between SBC-13STATE and a third party carrier at a point other than the LWCAL's Serving Switch.

- 4.2.6 Use of those vertical features, CLASS features, line class codes that are being used, as of the Effective Date, by SAGE to provide mandatory and optional calling scope plans on a retail basis, and other features, functions, and capabilities Loaded and Activated from the switch-vendor-provided software of the Serving Switch for use with Basic Analog Switching. "Loaded" means that it is included in the software installed in the Serving Switch. "Activated" means that the licensing fees are current; that no further license, right to use, or other fee needs to be paid to, and no enabling code or other mechanism or method needs to be obtained from a third party; and that translations and USOCs for use with LWC are in place such that ordering, billing and provisioning wholesale processes have been implemented. The Phase II implementation shall not negatively affect the availability of any Basic Analog Switching feature, line class code, function or capability that was Loaded and Activated prior to that implementation, and which were previously available to SAGE under this Agreement. Specifically excluded from the foregoing are other line class codes and any features, functions, or capabilities specifically developed by or on behalf of SBC-13STATE that it wishes to reserve exclusively for its use (e.g., "Toll Saver"). SAGE may request features, functions and capabilities of a Serving Switch that are not loaded or are not activated, through the Joint Development Project.

- 4.2.6.1 In the event that SBC-13STATE plans to cease offering, on a retail basis, a calling scope that is supported by a line class code(s) available to SAGE hereunder, SBC-13STATE shall provide written notice to SAGE within 30 days after SBC-13STATE's public announcement regarding the planned retail offering. SAGE shall provide SBC-13STATE with written notice no later than the 60th day after receipt of whether SAGE wishes to continue to use the supporting line class code(s), and the Parties shall engage in good faith negotiations over

the additional terms and conditions, including charges, with respect to SAGE's continued use and SBC-13STATE's continued maintenance of the supporting line class code(s).

4.2.6.2 SAGE may continue to use, and SBC OKLAHOMA agrees to maintain, the SBC Oklahoma "Local Plus"® line class codes ("OKLCCs"), which provide for the capability of providing an optional one-way, outward, extended area calling to other customers in SBC OKLAHOMA exchanges that are located within the same LATA where the SBC OKLAHOMA switch providing Basic Analog Switching for an LWCAL on which an OKLCC is present, is located. Calls included in this plan are dialed using a seven-digit or ten-digit dialing pattern. SAGE agrees to pay a monthly recurring charge of \$1.00 for each month or partial month that an LWCAL has a OKLCC present. SBC OKLAHOMA agrees to maintain the OKLCCs in all SBC OKLAHOMA circuit end office switches that provide LWC and from which SBC OKLAHOMA previously made "Local Plus"® available. SBC OKLAHOMA's maintenance includes making changes to the OKLCCs on a switch-by-switch basis when NPA splits or NPA overlays occur, and making changes to the OKLCCs on a switch-by-switch basis when a new NPA-NXX is added or removed from a "Local Plus" ® calling area. The dialing pattern will be maintained so that originating calls that are to be terminated within a "Local Plus" ® calling area will have the same dialing pattern as existed as of September 15th, 2003.

4.2.7 Use of SS7, CNAM, LIDB, E911, and 800 as required for originating calls from, or terminating calls to, a LWCAL, and for such other purposes to which the Parties agree pursuant to the Joint Development Project. See also 800 Database, LIDB-CNAM/LIDB-AS, and E911/Emergency Services Appendices hereof.

4.2.8 Use of SBC-13STATE's call routing tables in the Serving Switch for calls originating from the LWC Number in the same manner as calls from SBC-13STATE retail/resale service from that same Serving Switch are routed (local, intraLATA toll, transiting to other telecommunications carriers, transport to IXC POPs).

4.2.9 A daily usage feed containing usage records to facilitate billing and intercarrier compensation. Also see Message Recording (DUF) Appendix hereof.

4.2.10 911/E911 record administration and maintenance. Also see E911/Emergency Services Appendix hereof.

5. SCOPE; INTEGRATED OFFERING

5.1 This Agreement is applicable to and binding upon both Parties in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut, and only applies within the Service Areas. Should SBC-13STATE acquire, be acquired by, merge with or become an Affiliate of persons or entities representing additional ILEC territories in additional states, within 120 days of becoming the Affiliate of such person or entity, SBC-13STATE will notify Sage either: (i) that SBC-13STATE is willing to negotiate in good faith over the provision of LWC by those persons or entities under the same or substantially similar terms and conditions as set forth in this Agreement, or (ii) that those persons or entities will not provide LWC. If (ii) applies, or if (i) applies and the Parties are unable to negotiate a mutually acceptable arrangement within 90 days of receipt by Sage of the notice, then Sage may at its option terminate this Agreement by providing six (6) months' written notice to SBC-13STATE, which notice must be sent to SBC-13STATE no later than the 270th day of the initial SBC-13STATE notice sent under this Section.

5.2 Consistent with Section 8.1, SAGE and SBC-13STATE shall work cooperatively to implement the transition to LWC from the other serving arrangements that SAGE may have in any SBC-13STATE Service Area, including UNE-P and resold SBC-13STATE retail local exchange services.

5.3 SBC-13STATE and SAGE understand and agree that:

- 5.3.1 this Agreement, including LWC is offered as a complete, integrated, non-severable packaged offering only;
- 5.3.2 the provisions of this Agreement have been negotiated as part of an entire, indivisible agreement and integrated with each other in such a manner that each provision is material to every other provision;
- 5.3.3 that each and every term and condition, including pricing, of this Agreement is conditioned on, and in consideration for, every other term and condition, including pricing, in this Agreement. The Parties agree that they would not have agreed to this Agreement except for the fact that it was entered into on a 13-State basis and included the totality of terms and conditions, including pricing, listed herein;
- 5.3.4 that SBC-13STATE would not provide LWC but for the Parties' mutual agreement on each and every provision of this Agreement being integrated, non-severable, and indivisible in its entirety; and
- 5.3.5 that neither SAGE nor SBC-13STATE will be entitled to substitutions and/or modifications to the packaged contractual and network offerings based upon agreements either Party may enter into with third parties (e.g., no "picking and choosing" of selective terms and conditions), except as described in Section 12, Most Favorable Treatment.
- 5.4 In entering into this Agreement, each Party agrees to abide by and honor the terms and conditions, including pricing, set forth in this Agreement without challenging its provisions, and that it shall not take any position(s) that is inconsistent with the provisions set forth in this Agreement for so long as this Agreement remains in effect between the Parties. In particular, SAGE agrees that it shall not seek and/or otherwise initiate, participate (voluntarily) and/or intervene in any pending or future state or federal regulatory, judicial or legislative proceeding relating or applicable to, or which would reasonably be expected to affect, the LWC product including, without limitation, any docket or proceeding that require(d) that the SBC-13STATE ILEC(s) make available LWC (or a similar offering) at prices different than those in this Agreement (e.g., TELRIC rates), for so long as this Agreement remains in effect. On or before the Effective Date, or as soon as is practicable, SAGE shall dismiss and/or withdraw from any pending proceeding(s), if any, within the scope of and consistent with the foregoing. Nothing contained herein shall preclude SAGE from membership in any association or organization that itself takes actions inconsistent with this subsection 5.4 so long as such organizations do not represent that the position is supported by SAGE Telecom. SAGE shall require that such organizations affirmatively acknowledge that such organizations are not representing SAGE Telecom for any matters that SAGE could not otherwise participate in under this Agreement. Nothing contained herein shall preclude SAGE from taking any position with respect to the obligations of ILEC(s) that are not affiliates of SBC 13-STATE.
- 5.5 The Parties have concurrently negotiated an ICA amendment(s) to effectuate certain provisions of this Agreement ("Related ICA Amendments"). The Related ICA Amendments provides for, among other things, the deletion of certain unbundled local switching with shared transport offerings, changes to unbundled analog loop rates, and waiver of certain of SAGE's statutory rights under 47 U.S.C. § 252(i) and of SBC-13STATE's obligations under 47 U.S.C. §§ 251 and 252. The Related ICA Amendments shall be executed by authorized representatives of each Party, and filed with the appropriate State commissions for approval under Sections 251/252 of the Act.
- 5.6 Each Party and its Affiliates shall support and defend the reasonableness of this Agreement and the Related ICA Amendments, including their respective substantive terms and conditions and the commercial nature of the Agreement, publicly and before and with any federal or state governmental entity (including any regulatory agency, court, or legislature and the representatives of each) and regardless of the location, nature, or status of the forum or proceeding. Included within the foregoing is the obligation of each Party and its Affiliates to support and defend the indivisible nature of this Agreement and Related ICA Amendments, including against any attempts that could result in treatment contrary to Section 5.4.
- 5.6.1 Each Party and its Affiliates agree and acknowledge that this Agreement should not voluntarily be made publicly available, including that it should not voluntarily be filed with or made available to any federal or state governmental entity (including any regulatory agency, court, or legislature and the

representatives of each). The Parties understand and agree that in the event that a Party or any of its Affiliates ("Disclosing Party") is ordered, directed, or otherwise required to file this Agreement with any federal or state governmental entity, the Disclosing Party shall take any and all reasonable actions to obtain confidential treatment to avoid public disclosure of this Agreement (including, by way of example, seeking relief from the filing requirement, claiming any available exemptions from federal or state "freedom of information" laws, seeking a protective/confidentiality order, and/or redacting pricing information). In addition, the Disclosing Party must provide the other Party with written notice of the situation as soon as possible, and both Parties shall work together consistent with this Section and in the efforts of seeking, supporting, and defending the confidential nature of this Agreement. Notwithstanding the foregoing, both Parties acknowledge and agree that this Section 5.6.1 shall not prevent either Party from complying with applicable law.

- 5.7 SAGE and its Affiliates further agree not to seek in any regulatory, judicial or legislative proceeding the right to directly or indirectly purchase, or the obligation on SBC-13STATE to directly or indirectly provide, any SBC-13STATE-provided unbundled switching or any SBC-13STATE local switching under 47 U.S.C. § 271, including but not limited to any attempt to seek such obligation imposed upon SBC-13STATE in any proceeding involving SBC-13STATE's Affiliate's acquisition of AT&T Wireless. The failure to abide by this Section shall be deemed a material breach of this Agreement, except in any State, if any, where this Agreement has been terminated.

6. TECHNOLOGY EVOLUTION

- 6.1 Nothing in this Agreement shall constrain or otherwise limit SBC-13STATE from continuing to evolve and otherwise modify its networks by, for example, deploying new and different technologies and altering the manner in which LWC and other products and services are provided. SBC-13STATE shall retain the right to deliver LWC or functionalities comparable to LWC or the local exchange service SBC-13STATE provides to its retail voice customers in the areas in which it then serves as the incumbent local exchange carrier over the technologies and in the manner that SBC-13STATE chooses in providing LWC and the other products and capabilities that are the subject of this Agreement.

7. PRICING

- 7.1 The prices that shall apply under this Agreement are set forth in the attached LWC Pricing Schedule (including service order charges), which is attached and incorporated herein by this reference.
- 7.2 In the LWC Pricing Schedule, where rates are shown as monthly, a month will be defined as a calendar month. The minimum term for each LWCAL will be one (1) month. After the initial month for a LWC, billing will be on the basis of whole or fractional months used.
- 7.3 Where the capabilities exists, SAGE may purchase certain optional AIN-based features set forth on the LWC Pricing Schedule, on a per-LWCAL or per-usage basis as noted. Where activated and loaded in the Serving Switch, SAGE may purchase business line hunting to serve business LWC End Users, on a per-business LWC Number basis. The prices for these optional enhancements are set forth in the LWC Pricing Schedule.
- 7.4 The prices for LWC may be discounted (subject to pro-rating consistent with Section 7.2), subject to this Section 7.4.
- 7.4.1 The monthly recurring LWCAL Base Rate is subject to discounting, as follows:
- 7.4.1.1 \$1.00 per LWCAL, where the average Days Sales Outstanding (D-S-O) is no greater than 30 days over a Measurement Period (3-month average DSO) reporting basis across all SBC-13STATE for the purchases made under this Agreement.
- 7.4.1.1.1 D-S-O is calculated by using total outstanding receivables divided by total reported current billing (using SBC-13STATE Accounts Receivable Management System ("ARMS") end of month report results), times 30 days. This would mean that if all bills are being paid prior to invoice due date, the outcome would be less

than 30 days in a given month. As long as the average D-S-O result is less than 30 days monthly, then the average 3 month D-S-O result would also be less than 30 days, when calculating a Measurement Period D-S-O (using 3 months of total receivables divided by 3 months billed charges times 30 days, using the monthly ARMS results for the Measurement Period). In calculating D-S-O, charges deemed erroneous by both Parties will be excluded.

7.4.1.2 \$1.00 per LWCAL, if Measurement Period Churn is less than 6.5000 %.

7.4.1.2.1 If Measurement Period Churn is above 6.5000% for two (2) consecutive Measurement Periods but is below 7.5000%, the \$1.00 discount will continue for the following Application Period. If the Measurement Period Churn for the next Measurement Period (making it the third consecutive Measurement Period) is at or below 6.5000%, the \$1.00 discount will remain in effect for the next Application Period. However, if at the end of that third Measurement Period, the Measurement Period Churn rate is above 6.5000% but is less than 7.5000%, the Measurement Period Churn discount will be reduced to a rate of \$0.50 per LWCAL for that next Application Period. If instead during that third Measurement Period, the Measurement Period Churn rate is above 7.5000%, the discount will be eliminated, i.e., \$0.00 discount per LWCAL, for that next Application Period. If the Measurement Period Churn rate is above 7.5000% for two (2) consecutive Measurement Periods, the \$1.00 discount per LWCAL will be eliminated, i.e., \$0.00 discount. The Parties acknowledge and agree that the foregoing is a "rolling" process where the above is applied from each Measurement Period to the next, such that every two (2) consecutive Measurement Period is subject to the above and every three (3) consecutive as well. The Parties also acknowledge and agree that the opportunity to gain the Measurement Period Churn discount is available throughout the effectiveness of the Agreement, even if the Measurement Period Churn discount would go to \$0.00 at any time.

7.4.1.2.2 Notwithstanding the potential discount available to SAGE for Measurement Period Churn below the specified level or any other provision of this Agreement, the Parties acknowledge that this Agreement is not intended and shall not in any way limit or otherwise have any effect whatsoever on either Party's and/or its respective Affiliates' efforts to market and otherwise sell any telecommunications or information services to the end users and other customers of the other Party and its Affiliates. Irrespective of the Agreement, including the potential Measurement Period Churn discount, each Party and its Affiliates retain all of their rights and abilities to fully and robustly market and otherwise sell its telecommunications and information service, without regard to any possible effect on the calculation of Measurement Period Churn hereunder. No allowance shall be made in that calculation based upon any reasons underlying the calculated Measurement Period Churn, including without limitation end users who may migrate from SAGE to an SBC-13STATE retail service.

7.4.1.3 In no event shall the cumulative discount to the monthly recurring LWCAL Base Rate exceed \$2.00 per LWCAL per month.

7.4.2 The non-recurring Electronic Service Order Rate is subject to discounting as follows:

7.4.2.1 Where the achieved Flow Through is 96.5% or higher during any Measurement Period, the Electronic Service Order rate will be discounted for the following Application Period as shown on the LWC Pricing Schedule.

7.4.3 The discounts under Sections 7.4.1 and 7.4.2 shall be calculated and applied as follows: The Churn, D-S-O, and Electronic Flow Through calculations will be made using data starting with the first day, and ending on the last day, of the three-month Measurement Period. Any discount earned per those

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calculations shall then be applied to the monthly LWCAL Base Rate charges invoiced during the following Application Period, in accordance with Sections 7.4.1 and 7.4.2 (and their respective subsections).

Measurement Period

Sept., Oct., and Nov.

Dec., Jan., and Feb.

March, April, and May

June, July, and August

Application Period

following Jan., Feb., and March

following April, May, and June

following July, August, and September

following Oct., Nov., and Dec.

7.4.4 Based upon the scope and nature of this Agreement and the mutual belief that SAGE's Churn is likely to decrease based upon the offerings made available under and through this Agreement, SAGE shall be automatically entitled to the Churn discount for the period from the Effective Date through its first anniversary, subject to Section 7.4.1.3. Thereafter whether SAGE is entitled to any discounts for Churn shall be determined in accordance with Section 7.4.1.2.

7.4.5 A \$1.00 discount from the LWCAL Base Rate per LWCAL for the D-S-O discount, and a discounted Electronic Service Order rate of \$5.00 per LSR, shall be applied prospectively from the Effective Date through September 30, 2004, subject to Section 7.4.1.3. Thereafter whether SAGE is entitled to any discounts shall be determined in accordance with Sections 7.4.1 and 7.4.2.

8. PHASED-IN IMPLEMENTATION

8.1 SAGE understands and acknowledges that, as of the negotiation of this Agreement, SBC-13STATE's systems (including ordering, provisioning, maintenance, and billing systems) are not yet able to accommodate LWC as a unique and separate product offering. Accordingly, the transition shall be performed in two phases.

8.1.1 **Phase I:** Phase I involves using existing UNE classes of service and USOCs with LWC. Beginning within 60 days of the Effective Date, all of SAGE's UNE-Ps and any retail or resold residential or small business POTS service using basic analog switching to serve Eligible End Users shall be transitioned to, and provided as, LWC. SBC-13STATE may (and is planning) to adopt interim measures in order to render a bill to SAGE for LWC (e.g., using multiple USOCs to bill a single LWC charge) in advance of system changes, and SAGE shall pay the charges billed using such interim measures. Details regarding any interim measures will be made available to SAGE. The inability or other failure by SBC-13STATE to bill SAGE any LWC charge(s) shall not in any event act as a waiver by SBC-13STATE of its right to subsequently bill such LWC charge(s) at the prices and price structures included in this Agreement, or relieve SAGE of its obligation to pay those charges when rendered, on a retroactive basis and/or a prospective basis.

8.1.2 **Phase II:** Phase II will involve the transition to new LWC-specific class of service (COS) and possibly new USOCs, when and where SBC-13STATE is able to support them. SAGE acknowledges that this may occur on a State-by-State, region-by-region rollout. After the transition to Phase II, LWC will only be provided under the LWC-specific COS and any new and existing USOCs, to the full extent then-supported by SBC-13STATE's systems. SBC-13STATE shall bill, and SAGE shall pay the prices and charges established hereunder on a retroactive and/or prospective basis (including regardless of any provisions applicable to billing, including time/timing limitations and/or restrictions and processes, that might be set forth in or otherwise applicable under or to the Agreement or such billing). SBC-13STATE's provisioning of LWC is expressly subject to this Section and in no way constitutes a waiver of SBC-13STATE's rights under this Agreement to bill, charge for and collect payment for LWC.

8.1.3 The Parties acknowledge and agree that each Party will incur costs in implementing Phase I and Phase II, including the conversions related thereto, and each Party shall bear its own costs, including that SBC-13STATE shall not charge SAGE any service order charges for either of the conversions.

8.1.4 Phase II Transition Parameters

8.1.4.1 Calling scopes do not change

8.1.4.2 **SBC-13STATE** shall provide SAGE with the new list of USOCs at least 90 days before any conversion date for actual USOCs

8.1.4.3 Flash cut – SAGE shall not be required, on an SBC-region basis, to maintain in its systems both the UNE USOCs and the LWC USOCs at the same time.

8.1.4.3.1 Specifically, SAGE will not be required, on an SBC-region basis, to maintain the UNE USOCs for provisioning at the same time as it operates according to the LWC USOCs pertaining to billing.

8.1.4.3.2 To meet these criteria, conversions will take place by a flash-cut procedure on a region-by-region basis; or, alternatively, a simultaneous flash cut of all regions.

8.1.4.4 Process to be determined by the Process Task Force

8.1.4.4.1 It is understood by the Parties that there is a significant difference in system impact based upon whether the conversion is merely a mapping of currently used USOCs into the new LWC USOCs, as opposed to a conversion process that modifies the logic, method or sequence of provisioning.

8.1.4.4.2 To the extent possible, the existing gateways for wireline provisioning will be utilized.

8.1.4.4.3 Gateways for additional services shall be built on technologies similar to existing wireline provisioning platform in both speed and throughput.

8.1.4.4.4 To the extent practical, any new gateways shall be similar to the old gateways and if any changes to the processes in effect prior to this Agreement that may be customer-affecting, will be reviewed by the Process Task Force.

9. SERVICE ASSURANCE PLAN

9.1 The purpose of the service assurance plan is to establish warranty levels that represent reasonable performance measure payouts.

9.1.1 OSS Interface Ability

9.1.2 Order Confirmation Timelines

9.1.3 Order Completion Notifier Timelines

9.1.4 Percent Missed Due Dates

9.1.5 Installation Quality

9.1.6 Trouble Report Rate

9.1.7 Mean Time to Restore

See also Attachment Service Assurance Plan.

10. PAY-PER-CALLS

10.1 SAGE is solely responsible for 900/976/other similar pay-per-call calls originating from LWCALs, and associated charges. **SBC-13STATE** will provide SAGE the functionality of blocking calls 900/976 calls on a per-LWCAL basis.

11. JOINT DEVELOPMENT PROJECT

11.1 **SBC-13STATE** acknowledges that SAGE wants to be able to differentiate its local exchange service offering to Eligible End Users by being able to provide telecommunications and information services (including features and functionalities) that are not available from **SBC-13STATE** as part of LWC ("New

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Offerings"), and that the achievement of that goal is an integral consideration of this Agreement. The Parties acknowledge that the ability to do so will involve their joint efforts, whether a New Offering is developed jointly by the Parties or whether developed by SAGE itself or by SAGE and third parties. SAGE acknowledges that certain New Offering will likely encompass SAGE (or a third party acting on behalf of SAGE) gaining access to certain SBC-13STATE systems and capabilities that have not been previously offered or tested for interoperability with Foreign networks. Additionally, the Parties believe that from time to time, either may have suggestions for system improvements aimed at better fulfilling the objectives of this Agreement. (e.g., reducing Operations Costs). The Joint Development Project shall be for the duration of the effectiveness of this Agreement, unless mutually agreed by the Parties.

- 11.2 The Parties agree that the activities outlined in Section 11.1 will require a joint development and/or engineering relationship and undertaking to explore (i) protocols and procedures for the Foreign network access and interoperability of SAGE systems with LWC, including ensuring that the reliability and integrity of SBC-13STATE's systems are protected and that suitable testing is completed; and/or (ii) SBC-13STATE directly integrating, maintaining, and operating the New Offerings as part of its own network, including the possibility as a Custom Adjunct capability maintained exclusively for Sage's use pursuant to this Private Commercial Agreement; and/or (iii) any suggested system improvements.
- 11.3 Jointly recognizing the complexity and scope of the issues surrounding this subject and the limited timeframe in which this Agreement was negotiated, the Parties agree to negotiate in good faith in an attempt to reach a mutually-agreeable additional agreement(s) to establish and govern "Joint Development Project" aimed at the objectives of this Section 11. The Parties agree to devote a high level of attention and resources to those negotiations. Among the issues to be addressed are:
- 11.3.1 The negotiation, design, engineering, testing, deployment and operations of such Foreign access or Custom Adjunct capabilities.
- 11.3.2 The program-management role of the Joint Development Project, including its problem-solving responsibility to initially evaluate the feasibility and best method of achieving the desired results, including but not limited to (i) establishing procedures and protocols for Foreign network access; (ii) developing the capability as a Custom Adjunct, (iii) Activating additional capabilities on the SBC-13STATE network; or (iii) other methods to be determined by the Joint Development Project.
- 11.3.3 The representation of SAGE and SBC-13STATE on, and the operation of, the Joint Development Project, including such topics as regular face-to-face meetings, the method of submitting their own company's requests for consideration, the management levels and authority of Party representatives, and the treatment of costs incurred related to the Joint Development Project (including Sage's responsibility for SBC-13STATE network and system changes that may be made, including additional charges).
- 11.3.4 The treatment of any and all Intellectual Property associated with the Joint Development Project and any of its efforts, including the process of information disclosure, the use of any information disclosed or shared, and the ownership and licensing of any Intellectual Property rights to such information exchanged, discussions, and/or any development effort.
- 11.4 The Parties also agree that SBC-13STATE may reserve certain custom-developed features and service integration techniques for the use of its own retail customers, and not including these in LWC; or that Sage may wish to operate its own value added systems for enhanced features or more integrated product bundling for possible use in conjunction with LWC.
- 11.5 Concurrent with the negotiations under Section 11.3, SBC-13STATE and SAGE shall engage in good faith discussions on
- 11.5.1 the potential development and development by SBC-13STATE of the capability to use SS7 signaling (i.e., TCAP message based) to trigger the "message waiting indicator" on LWCAL, for use in conjunction with the provision of voice mail by SAGE to LWC End Users. Nothing herein shall commit SBC-13STATE to make any such capability available, or to create the potential for

compromising or otherwise negatively affecting the security or operations of SBC-13STATE's network, including its SS7 network and switches; and

- 11.5.2 Methods of retrieving any existing calling records (usage), and generating and providing prospective calling records, for calls terminating to SAGE LWC End Users from local interconnection trunks, where such records may not be currently made and/or directed to SAGE due to system parameters.
- 11.6 The Joint Development Project will seek to identify methods of incorporating Broadband access with LWC.
- 11.6.1 Such methods analyzed will include the possibility of utilizing DSL access capabilities provided by SBC-13STATE to a SAGE-designated router or server or to an Internet Service Provider. Such methods may include an arrangement in which SAGE might be the service integrator at a contractual level, or signaling and control level, between SBC-13STATE and certain other third parties. The Parties recognize that the methods analyzed may include those that fall outside the previous approaches such as DSL Loop unbundling, line sharing or line splitting, but must involve activities that SBC-13STATE can permissibly entertain in light of its current corporate structure and regulatory constraints. Such arrangements may represent a differentiation and added value of the services available through this Private Commercial Agreement or related agreements as compared with the current standard industry offerings related to non-ILEC DSL.
- 11.6.2 Parties recognize that SBC-13STATE has separately offered (e.g., via its Stand-Alone Broadband Service Agreement), and currently plans to continue to offer, certain commercial service arrangements to enable Carriers to provide xDSL-based services to their customers; however, SBC-13STATE currently has operational constraints in its ability to provide xDSL network functionality, including without limitation, Stand-Alone Broadband Service, over the same facility that another Local Exchange Carrier is providing narrowband service using SBC-13STATE wholesale switching and loop facilities (e.g., UNE-P, Local Wholesale Complete).
- 11.6.3 Simultaneously with this Joint Development Project SBC-13STATE plans to review the feasibility of potential product offerings that could be used to facilitate such functionality in such contexts and if it does so will advise SAGE of such offerings which may then expand the offerings available to SAGE directly or through providers of DSL, including SBC-13STATE's Advanced Solutions ("ASI") or Internet Service affiliates.
- 11.6.4 The Joint Development Project will serve as a venue, subject to appropriate confidentiality safeguards, for SAGE and SBC-13STATE to explore alternatives for incorporation of a Broadband Internet access method together with LWC.
- 11.7 Also, in recognition of the possibility that the deployment of packet (data) technology within the SBC-13STATE network architecture used to provide LWC may have an affect on SAGE's service offerings to its LWC End Users which use voice-band modem-data services using the ITU V.92 standard with bi-directional PCM, the Parties commit to exploring alternative serving arrangements for supporting data transmission services/capabilities through the Joint Development Project, recognizing that to the extent the Parties identify any such alternate serving arrangements, the deployment, provision and/or utilization of any of the foregoing arrangements is not required absent the Parties' voluntary agreement to mutually acceptable terms and conditions, including but not limited to pricing, for such arrangements.
- 11.8 In the event that the Parties have not reached mutually agreeable terms and conditions for the Joint Development Project by the first anniversary of the Effective Date, SAGE shall have the right to terminate this Agreement upon 180 days' written notice, which, if given, shall be sent to SBC-13STATE no later than 30 days after that first anniversary.

12. MOST FAVORABLE TREATMENT

12.1 SBC-13STATE commits that the price and price-affecting terms and conditions for LWC under this Agreement shall be no less favorable, on a 13-state basis, than those under which LWC are voluntarily provided by SBC-13STATE to other telecommunications carriers either purchasing the same or fewer quantities of LWC or that are not subject to provisions that are similar to Sections 1.3.3, 1.4. and 1.4.2 hereof, in the same States and in the same geographic areas where SAGE purchases LWC (determined after taking into account the application of Sections 1.3.3, 1.4, and 1.4.2, if triggered, and assuming SAGE meets all applicable volume and other price-related commitments in the other carrier's agreement to qualify for the same pricing as the other carrier). The exclusive means and standard in applying this Section 12.1 shall be as follows:

12.1.1 Solely for SAGE's use in conjunction with this Section 12.1 and for no other purpose whatsoever, SBC-13STATE may elect to provide SAGE another telecommunications carrier's LWC agreement (appropriately redacted so far as possible as to not disclose or tend to disclose such carrier's identifying information), to the extent permitted by law and by such other agreement. SAGE shall have a right for 45 days after receipt of such agreement to analyze the application of its terms and conditions (as of the effective date of such carrier's LWC agreement), to SAGE's actual purchases and activities under this Agreement for the most recent invoice dated prior to the effective date of such other carrier's LWC agreement (including without limitations using order activities; actual LWC End Users and their locations, distribution, and usage; and taking into account SAGE's and such carrier's respective reciprocal compensation arrangements, and taking into account the discounts available under this Agreement and any discounts available under such carrier's LWC agreement), with the Parties' intent being to closely estimate what SAGE would have paid under such carrier's LWC agreement. If, based exclusively upon that estimation, SAGE believes it would have saved at least 2.5% under such agreement, SAGE may request re-negotiation of this Agreement by providing written notice delivered to SBC-13STATE no later than 5:00 p.m. Central Time on that 45th day, which notice shall include SAGE's estimation in sufficient detail so as to demonstrate to SBC-13STATE that it is entitled to request the re-negotiation (and to the extent SBC-13STATE disagrees with SAGE's estimation, either Party may invoke the dispute resolution provisions hereof to determine whether SAGE has a right to request re-negotiation of this Agreement).

12.1.2 If SBC-13STATE does not provide such other carrier's LWC agreement under Section 12.1.1, then SBC-13STATE shall perform the estimation in accordance with Section 12.1.1. If SBC-13STATE's estimation reveals that SAGE would have saved at least 2.5% under such agreement, then SBC-13STATE shall immediately notify SAGE of such circumstance and, thereafter, SAGE shall have a right for 45 days after that notice to request the re-negotiation of this Agreement. The exclusive means of invoking that right shall be by providing written notice delivered to SBC-13STATE no later than 5:00 p.m. Central Time on that 45th day.

12.1.3 Any LWC agreement or other related information provided by SBC-13STATE under this Section 12.1 (including any copies, excerpts, and summaries thereof) shall be returned to SBC-13STATE no later than the 45th day (under either Section 12.1.1 or 12.1.2, as applicable), whether or not SAGE requests the re-negotiation of this Agreement, and with SAGE retaining no copies, excerpts, summaries, data, analysis, or any other information attributable to or derived from such agreement.

12.1.4 Any LWC agreements or information provided by SBC-13STATE under this Section 12.1 shall be strictly confidential in accordance with Section 27, Non-Disclosure. The provisions of this Agreement shall continue to apply until the effective day of any amendments or the effective date of any successor agreement, if any, negotiated under this Section 12.1. If the parties do not reach a mutually agreed upon amendment or successor agreement, SAGE shall have a right to terminate this Agreement upon 180 days' written notice. Without limiting the application of the other provisions of this Agreement, including to this Section 12.1, in no event shall SAGE or any other person or entity be entitled to indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages, or any lost business opportunity/profits, in connection with or related to this Section 12.1.

- 12.2 If during any period hereunder beginning on July 1, 2008, SAGE voluntarily agrees to pay or is paying a non-**SBC-13STATE** ILEC within any of the 13 states more for an "Unbundled Network Element Platform" (the so-called "UNE-P") that uses switching capability that is substantially similar to Basic Analog Switching, than the LWC price (calculated without regard to the discounts potentially available under Section 7.4 hereof or reciprocal compensation arrangements, and using 1600 MOUs of originating interswitch calling and 1000 MOUs of terminating interswitch calling), SAGE shall immediately notify **SBC-13STATE** of such circumstance and, thereafter, **SBC-13STATE** shall have a right for 45 days after that notice to request the re-negotiation of this Agreement. The exclusive means of invoking that right shall be by providing written notice delivered to SAGE no later than 5:00 p.m. Central Time on that 45th day.
- 12.3 For purposes of this Section 12 only, "LWC" as it is applied in reference to another carrier's agreement shall refer to any service substantially similar to LWC as provided in this Agreement.

13. CARRIER RECIPROCITY

- 13.1 This Agreement is reciprocal in nature, in that SAGE is required, upon written request, to provide a LWC-equivalent offering to **SBC-13STATE** (or any of its current or future Affiliate(s) which is a telecommunications carrier providing local exchange service) in any geographic area where SAGE provides local circuit-switched wireline service over its own facilities (at a minimum, using its own basic analog loops and basic analog switching). The LWC-equivalent offering SAGE would make available would be provided on the same terms and conditions, including pricing, as **SBC-13STATE** is making LWC available within its Service Areas to SAGE. Notwithstanding the foregoing, SAGE would not be required to provide as part of this reciprocity arrangement features or functions not active in its own retail product offering, or which are not commercially reasonable for SAGE to obtain. As examples, SAGE might have limited service without the equivalent capabilities to provide non-dedicated transport, LATA-wide calling scopes, or certain SS7 functionalities.

14. WHITE PAGES DIRECTORY LISTINGS

14.1 General White Pages Requirements

- 14.1.1 **SBC-13STATE** publishes alphabetical White Pages directories for their respective geographic local service areas. With LWC, SAGE will be providing local exchange telephone service via LWC to LWC End Users in the same area(s). **SBC-13STATE** therefore offers to include SAGE's LWC End Users' listing information in the appropriate **SBC-13STATE** White Pages directories, at parity with that provided to **SBC-13STATE** retail end users, as set forth herein.
- 14.1.2 Subject to **SBC-13STATE**'s practices regarding White Pages directory publishing, as well as to state and/or federal rules and regulations applicable to the provision of telephone directories generally, **SBC-13STATE** will include in the appropriate **SBC-13STATE** White Pages directories the primary alphabetical listings of all SAGE LWC End Users located within the local directory scope. When SAGE provides its subscriber listing information to **SBC-13STATE** directory listings database, SAGE will receive for its LWC End User, one primary listing in corresponding **SBC-13STATE** White Pages directory and a corresponding listing in **SBC-13STATE**'s Directory Assistance database.
- 14.1.3 SAGE will provide accurate subscriber listing information for its LWC End Users to **SBC-13STATE** via a mechanical or manual feed of the directory listing information to **SBC-13STATE**'s directory listing database. SAGE agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon SAGE reaching a volume of two hundred listing updates per day, whichever comes first. SAGE's LWC End User subscriber listings will be filed alphabetically in the directory listing database among **SBC-13STATE**'s end user listings. SAGE shall furnish to **SBC-13STATE**, in a form acceptable to both Parties, subscriber listing information pertaining to SAGE's LWC End Users located within the local directory scope, along with such additional information as **SBC-13STATE** may require to prepare and print the alphabetical listings of said directory, as set forth in the CLEC Online (<https://clec.sbc.com/clec>) web site. SAGE will submit listing information within one (1) Business Day of installation, disconnection or other change in

service (including change of non-listed or non-published status) affecting the Directory Assistance database or the directory listing of an LWC End User. In addition, for timely inclusion in the published White Pages directory, SAGE must submit all of its LWC End User listing information intended for publication by the directory close date for that particular White Pages directory.

14.2 Enhanced and Non-Published White Pages Requirements

14.2.1 Where a SAGE LWC End User desires foreign, enhanced, additional or other special listing treatment in addition to the primary listing to appear in the White Pages directory, SAGE will be responsible for ordering the desired special listing treatment on a Local Service Requests submitted to the **SBC-13STATE** Local Service Center. The LSRs for foreign, enhanced, additional or other special listing treatment shall be subject to the same directory close deadlines applicable to that particular White Pages directory. Upon receipt of a timely LSR for such listings, **SBC-13STATE** will publish the requested listing(s) and begin assessing SAGE the corresponding monthly recurring charge, which charge shall be charged at a rate of 65% of the then current SBC-13STATE retail tariff rate.

14.2.2 Where a SAGE LWC End user desires not to be listed in the White Pages directory and/or the Directory Assistance database, SAGE will be responsible for submitting LSR(s) to the **SBC-13STATE** Local Service Center requesting that the LWC End User listing not be published in **SBC-13STATE**'s White Pages and/or Directory Assistance databases. The LSRs for not publishing White Pages listings will be subject to the same directory close deadlines applicable to that particular White Pages directory. Upon receipt of a timely LSR, **SBC-13STATE** will make the applicable non-published and/or non-listed designations in the White Pages and/or Directory Assistance databases and begin assessing SAGE the corresponding monthly recurring charge, which charge shall be charged at a rate of 65% of the then current SBC-13STATE retail tariff rate.

14.3 Third Party Publisher Requests for LWC End User Listings

14.3.1 **SBC-13STATE** agrees to serve on SAGE's behalf as the single point of contact for all independent and Third Party directory publishers who seek to include SAGE's LWC End User listing information in an area White Pages directory, and to handle SAGE's LWC End User listing information in the same manner as for **SBC-13STATE**'s end user listing information. **SBC-13STATE** further agrees not to charge SAGE for serving as the single point of contact with independent and Third Party directory publishers, no matter what number or type of requests are fielded.

14.3.2 In exchange for **SBC-13STATE** serving as the single point of contact and handling all LWC End User listing requests free of any charge separate to SAGE, SAGE authorizes **SBC-13STATE** to include and use the published SAGE LWC End User listing information provided to **SBC-13STATE** pursuant to this Agreement to all requesting independent and third party directory publishers, as well as in **SBC-13STATE**'s White Pages directory. Included in this SAGE authorization is a release of SAGE listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable State regulations and orders. Also included in this SAGE authorization is **SBC-13STATE**'s use of SAGE's LWC End User subscriber listing information in **SBC-13STATE**'s directory assistance, directory assistance related products and services, and directory publishing products and services.

15. TERMINATING TRAFFIC COOPERATION

15.1 The Parties jointly desire to avoid having non-local (e.g., toll) traffic being terminated to SAGE LWCALs or from Sage LWCALs to **SBC-13STATE** in ways that seek to prevent the identification of that traffic as non-local and/or to avoid the application to either Party's non-local intercarrier compensation arrangements, including Access rates, to that traffic. In addition to the actions taken under Section 11, the Parties agree to cooperate with one another and jointly work together toward that objective by engaging in joint, coordinated efforts to identify possible situations where such traffic termination may be occurring, and to investigate them where warranted. Based upon those investigations, the Parties shall affirmatively and fully explore taking lawful corrective action to resolve the matter in question. Among the possible alternatives and

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remedial actions that the Parties may consider include network interconnection modifications/re-engineering; employing the steps outlined in Section 11.5.2 for recovering usage records (including rendering billings related to those records); and/or joint federal or state regulatory and/or court action (including those where joint defense agreements might be appropriate) to seek compensation, damages, equitable relief, and/or other remedies (including the possibility of blocking non-local traffic being routed over local trunks). Nothing in this Agreement requires either Party to obtain from the other the right to unilaterally conduct its own investigations, or pursuing alternatives and/or remedial action on its own, including if the Parties are unable to agree on joint government petitioning action. The Parties shall also attempt in good faith to coordinate their individual efforts in non-litigation/non-contested case public proceeding and forums, such as federal or state rulemakings, notices of inquiries, collaboratives, and other similarly-structured government petitioning processes. The Parties' efforts under this Section are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.

16. INTERCARRIER COMPENSATION

- 16.1 As between SBC-13STATE and SAGE and its Affiliates, Local Traffic, ISP-Bound Traffic, Extended Area Service Traffic and Optional Extended Area Service Traffic originated from, or terminated to, an LWCAL or LWC Number shall be subject to a bill and keep arrangement (e.g., no separate reciprocal compensation settlement payments, including no tandem compensation).
- 16.2 SAGE shall be solely responsible for establishing compensation arrangements (and any associated charges) with third party carriers (e.g., ILECs interexchange carriers, CMRS, and CLECs) for traffic originated from, or terminated to, an LWC Number for such traffic with third party carriers (e.g., ILECs, interexchange carriers, CMRS, CLECs). The foregoing includes exchange access charges and reciprocal compensation charges. SAGE shall indemnify, defend, and hold harmless SBC-13STATE against any charges, claims, damages, liabilities and expenses from third parties ("Losses") arising from traffic originated from and/or terminated to any SAGE LWCAL or LWC Number. SBC-13STATE may provide information on traffic that transits its network to other telecommunications carriers or entities involved in completing Sage's customers' calls as appropriate to resolve traffic compensation issues. With respect to the information provided by SBC-13STATE for Texas, SBC-13STATE shall use the terms of the Letter Agreement - Non-Disclosure Agreement ("NDA") Process that was agreed to between the Parties for the term of the NDA. At the end of the term of that Agreement, if the NDA is not extended or replaced by agreement of the Parties, exchange of information shall be governed by the other provisions of this section. SAGE agrees that SBC-13STATE is not required to function as a billing intermediary for billing and payment of traffic exchanged between SAGE and third party carriers related to this Agreement. Under no circumstances will SBC-13STATE be required to pay any intercarrier compensation to any entity including, without limitation, a third party carrier for termination of traffic originated from, or terminated to, by a LWCAL or LWC End User.
- 16.3 In accordance with this Section 16 of the Agreement, all Local Traffic, ISP-Bound Traffic, Extended Area Service Traffic and Optional Extended Area Service Traffic is subject to a "bill and keep" arrangement. In States in which SBC-13STATE has offered to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan ("FCC Plan") pursuant to the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order"), the Parties hereby agree that the rates, terms and conditions set forth in the FCC Plan will not apply to ISP-Bound Traffic exchanged under this Agreement. The traffic exchanged between LWC End Users and LWCALs, and SBC-13STATE end users shall not be included in any calculation under the FCC Plan for determining growth caps or determining amounts of traffic to be compensated, if any, at the FCC's interim rates as set forth in the FCC's ISP Compensation Order.
- 16.4 Except as provided for the limited time in Texas, compensation for interstate intraLATA toll traffic exchanged between LWCALs and SBC-13STATE end users will be at rates no higher than SBC-13STATE's Interstate Access Service Tariff rates. Until June 30, 2004, in Texas, SAGE will be entitled to

charge up to the access rates for interstate intraLATA toll traffic access that it is charging as of the Effective Date, or the SBC-13STATE rate, whichever is higher. On July 1, 2004 and hereafter, SAGE will charge the SBC-13STATE rate. A Party shall only be permitted to charge the other end office rate elements for termination of such traffic (e.g., a Party shall not charge the other tandem switching and common transport rate elements). For purposes of this Agreement and for determining which traffic is subject to access charges, intraLATA toll traffic is as defined in SBC-13STATE's Interstate Access Service Tariff. This Section 16.4 does not apply to interstate IntraLATA toll traffic carried by a third party interexchange carrier or toll provider.

- 16.5 Compensation for intrastate intraLATA toll traffic exchanged between LWCALs and SBC-13STATE end users will be at rates no higher than SBC-13STATE's Intrastate Access Service Tariff rates. A Party shall only be permitted to charge the other end office rate elements for termination of such traffic (e.g., a Party shall not charge the other tandem switching and common transport rate elements). This Section 16.5 does not apply to intrastate IntraLATA toll traffic carried by a third party Interexchange carrier or toll provider.
- 16.6 Under no circumstances shall SBC-13STATE be liable to SAGE or any third party for any Losses including, without limitation, intrastate and/or interstate switched access charges, arising out of or related to Voice Over Internet Protocol traffic or any interexchange circuit-switched traffic utilizing in whole or part IP technology terminated to the LWCAL that was delivered to SBC-13STATE over local interconnection trunk groups from a third party carrier.

17. OPERATIONAL ISSUES

- 17.1 SBC-13STATE and SAGE agree to mutually work on evolving the LWC ordering processes to achieve an objective of Flow Through level of 98% of Local Service requests (LSRs) for LWC.
- 17.2 Ordering and, by no later than August 1, 2004, Trouble Reporting Interfaces must be electronic via existing and currently supported SBC-13STATE versions of OSS interfaces.

18. EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION

- 18.1 The Effective Date of this Agreement shall be July 1, 2004 (the "Effective Date").
- 18.2 This Agreement shall commence upon the Effective Date and shall automatically expire at 11:59:59 p.m. Central Time on July 31, 2011 ("Expiration") unless terminated earlier as provided for herein.
- 18.3 SBC-13STATE shall have the right to set all of the LWC prices at a market price determined by SBC-13STATE, beginning on and after July 1, 2008. Any increase under this Section 18.3 in the LWCAL base rate in any single year shall not exceed the LWCAL Base Rate, prior to any discounts, charged in the month prior to the month in which the increase will take effect, times the percent increase in the Consumer Price Index for the most recent 12 month period for which data is available at the time SBC-13STATE provides written notice hereunder. SBC-13STATE may exercise that right for the first time by providing SAGE written notice no later than 5:00 P.M. Central Time on December 31, 2007. If SBC-13STATE provides such a notice under this Section, SAGE shall have the right to request to re-negotiate or terminate this Agreement by providing SBC-13STATE 180 days written notice. The LWC price changes set forth in any SBC-13STATE notice provided on or before December 31, 2007 shall become effective as of July 1, 2008. Thereafter, any such price changes shall be made by providing SAGE written notice of the changes no later than December 31st of any year during the remaining Term (i.e., 2008, 2009, and 2010), with the changes becoming effective on the July 1st immediately following any such SBC-13STATE notice. Unless this Agreement is terminated, the provisions contained within Section 12 will continue to apply.
- 18.4 In the event that SAGE should wish to pursue a successor agreement with SBC-13STATE to have in place after the Expiration, SAGE must provide SBC-13STATE with a written request to negotiate no later than 180 days prior to the Expiration. Upon SBC-13STATE's receipt of SAGE's request to negotiate, the Parties shall commence good faith negotiations for a successor agreement. The terms and conditions, including

pricing, of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of the successor agreement; or (ii) the Expiration.

- 18.5 Notwithstanding any other provision of this Agreement, and in addition to SBC-13STATE's rights to terminate under other Sections of this Agreement, including without limitation Sections 18.6, 18.7, and 29, a Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or breaches a material provision of this Agreement and the other Party fails to cure such nonperformance or breach by 5:00 p.m. Central Time on the 45th calendar day after receipt of written notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00 p.m. Central Time of the 14th day following receipt of the nonperformance/breach notice, providing with specificity the basis for its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 26. If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by deadline on the 45th day that the nonperformance/breach has been cured. Any termination of this Agreement pursuant to this Section 18 shall take effect in accordance with the written notice delivered to the nonperforming/breaching Party after it failed to cure and/or to certify by the deadline on that 45th day.
- 18.6 In the event that any federal or state government action (including by a regulatory agency, a court, or a legislature) requires SBC-13STATE to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to SAGE, any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow SAGE, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement, including by way of example, at prices or price structure/application or reciprocal compensation arrangements different than agreed to in this Agreement as a whole by the Parties, the Parties both agree, except to the extent prohibited by law, to waive their respective rights to such change in the Agreement, including but not limited to waiving any right they may have to obtain the terms available to other carriers, persons or entities as a result of such government action. However, if the Parties are prohibited from legally waiving the effects of such government action, then as between the Parties the provisions of Section 5.3 are deemed to be rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect and the procedures of Section 29 (Severability) shall be invoked to address Section 5.3 and those provisions that were required to be provided, modified, or otherwise made available to SAGE, any other telecommunications carrier, or any other person or entity. Where the foregoing invocation of Section 29 results in a right to terminate and is the result of a state government action, the right shall arise only in the state in which such action occurred and any termination of this Agreement would be for that state only (unless this Agreement is terminated pursuant to Section 18.7).
- 18.7 Section 18.7 (all references to Section 18.7 expressly includes its subsections) applies in accordance with its provisions, notwithstanding Section 18.6 or any other provision in this Agreement to the contrary.
- 18.7.1 SBC-13STATE shall have the right to terminate this Agreement in whole or in part, upon written notice to SAGE, in the event that any federal action, or state government actions in two or more states, (including by a regulatory agency, a court, or a legislature) requires SBC-13STATE to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow SAGE, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement as they were agreed to by the Parties, including by way of example, at prices or price structure/application or reciprocal compensation arrangements different than agreed to in this Agreement as a whole by the Parties. If such state government action only occurs in one state, SBC-13STATE shall have the right to terminate the Agreement in that state by written notice to SAGE. If such government action occurs at the federal level or in two or more states, SBC-13STATE shall have the right to terminate, at its election, the Agreement in its entirety or, alternatively, only in one or more of the affected states, by written notice to SAGE.

- 18.7.2 This Agreement shall be null and void, automatically and in its entirety in any single state if this Section 18.7 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect in such state. This Agreement shall be null and void, automatically and in its entirety if either a) by state government action in two or more states, or b) by federal government action, this Section 18.6 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect by such state and/or federal government action(s).
- 18.7.3 Any termination or invalidation of this Agreement under this Section 18.7 shall be effective as of the day before the effective date of such governmental action that triggered the invalidation or right to terminate, and SBC-13STATE and SAGE agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on Sage LWC End Users.
- 18.7.4 Each Party understands and acknowledges that (i) any right to terminate under this Section 18.7 becomes available even if this Agreement between the Parties themselves would otherwise be unaffected by the triggering federal or state government action; and (ii) that this Section 18.7 (as well as Section 18.6) is triggered and applies on each occurrence of any federal or state government action described in Sections 18.6, 18.7.1 and/or 18.7.2.
- 18.8 Upon the Expiration or termination of this Agreement, SBC-13STATE and SAGE shall cooperate in good faith to effect an orderly transition of SAGE end users under this Agreement; provided that SAGE shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its LWC End Users have been transitioned from LWC to another serving arrangement of SAGE's choosing that is generally available under Sections 251 and 252 of the Act at that time by the Expiration or termination of this Agreement or that such LWC End User customers have otherwise been informed by SAGE that their LWC-based services will be discontinued/disconnected by SAGE on or before the Expiration or termination, unless otherwise provided herein or agreed by both Parties.
- 18.9 Upon the Expiration or termination of this Agreement, in one or more State, neither Party shall have any further obligation under this Agreement in such State or State(s), except:
- 18.9.1 Each Party's confidentiality obligations shall survive, and
- 18.9.2 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and
- 18.9.3 Each Party's indemnification obligations shall survive; and
- 18.9.4 As provided in Section 40.
- In any event, SBC-13STATE shall be under no obligation to provision LWC or any other offering provided pursuant to this Agreement as of and after the Expiration or termination.

19. REUSE OF FACILITIES

- 19.1 Each Party will abide by any applicable federal and state laws and regulations in obtaining end user authorization prior to changing an end user's provider of services through or by using LWC and in assuming responsibility for any charges that may apply to the extent the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) or any state regulation applies to the changing of an end user's provider of services through or by using LWC.
- 19.2 When a LWC End User changes or withdraws authorization from SAGE, SAGE shall immediately release the facilities belonging to or possessed by SBC-13STATE being used to provide LWC in accordance with that LWC End User's direction or that of the LWC End User's authorized agent and shall promptly provide SBC with all information necessary for SBC-13STATE to reclaim or reuse the facilities, including, but not limited to the circuit ID of the affected facility.
- 19.3 Further, when a LWC End User abandons its service (that is, service in a particular place of business or domicile), SBC-13STATE is free to reclaim the LWC End User-specific facilities, and is free to issue service orders required to reclaim such facilities. The carrier providing service to the abandoning end user shall

provide all information necessary for SBC-13STATE to reclaim and reuse the facilities, including, but not limited to the circuit ID. The Parties agree to the re-use of existing network facilities when a LWC End User changes its provider of local exchange service, and the network facilities are provided by the same network provider.

20. BRANDING

- 20.1 Except where otherwise required by law or as permitted by Section 41, SAGE shall not, without SBC-13STATE's written authorization (which shall not be unreasonably withheld), (i) offer LWC or any offering provided under this Agreement using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of SBC-13STATE or its Affiliates, or (i) state or imply that there is any joint business association or similar arrangement with SBC-13STATE or its Affiliates in the provision of services to SAGE's own customers. SAGE may brand LWC (or any other offering provided under this Agreement) with its own brand name, but neither SBC-13STATE nor its Affiliates will provide for SAGE branding of LWC or any other offering provided under this Agreement.
- 20.2 Neither SBC-13STATE nor its Affiliates shall be obligated to provide SAGE with branding of any kind including but not limited to, technician apparel, vehicles, forms; nor shall SBC-13STATE or any of its Affiliates technicians carry and provide to SAGE's customers, SAGE-branded business cards or other printed materials.

21. FORCE MAJEURE

- 21.1 SBC-13STATE shall not be responsible for delays or failures in performance resulting from acts or occurrences beyond SBC-13STATE's reasonable control, regardless of whether such delays or failures in performance were foreseen or foreseeable, including, without limitation: fire, explosion, power failure, power blackouts, cable cuts, acts of God, acts of nature, unusually severe weather conditions, acts of civil or military authority, war, terrorist acts, riots, insurrections, revolution, civil commotion, or acts of public enemies, any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, work stoppages, slowdowns, picketing or boycotts; embargoes, epidemics, nuclear accidents, or delays caused by SAGE or by essential service or equipment vendors; or any other circumstances beyond SBC-13STATE's reasonable control. In such event, SBC-13STATE shall, upon giving prompt notice to SAGE be excused from such performance on a day-to-day basis to the extent of such interference (and SAGE shall likewise be excused from performance of its obligations on a day-for-day basis to the extent its obligations relate to the performance so interfered with). SBC-13STATE shall use its reasonable efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

22. GOVERNING LAW

- 22.1 This Agreement shall be governed by and construed in accordance with the laws of the SBC-13STATE State in which the LWC was provided and if agreement cannot be reached upon which state law applies or if the same matter involves multiple States, the laws of the State of Texas shall apply, and in any event without regard to the conflict of law principles of the applicable State's laws.

23. LIMITATION OF LIABILITY

- 23.1 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 and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) ("Loss" or "Losses") relating to or arising out of such Party's performance under this Agreement and any and all dealings and arrangements between the Parties relating to LWC and the other offering available hereunder (but excluding any Loss(es) relating to or arising out of any SBC-13STATE tariffs and products purchased by SAGE from SBC-13STATE tariffs, which shall be governed exclusively by such tariffs) ("LWC Operations"), including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this

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Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute shall not exceed in total the amount **SBC-13STATE** or SAGE has charged or would have charged to the other Party for the affected service(s) that was not performed or was improperly performed (not to exceed twelve (12) months). Neither SAGE 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 a 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 23.2 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, subject to Section 23.3 below; provided, however, nothing in this Section 23.1 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 services. Rather, 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.

- 23.2 Except as otherwise expressly provided in specific appendices and subject to Section 23.5 below, in the case of any Loss alleged or claimed by a third party to have arisen out of the gross 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 gross negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 23.3. A Party may, in its sole discretion, provide in its tariffs and contracts with its end users or third parties that relate to any 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 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 23.3.
- 23.4 **SBC-13STATE** shall not be liable for damages to a LWC End User's premises resulting from the furnishing of any services hereunder 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, subject to Section 23.5 below.
- 23.5 In the event that any Party to this Agreement or any third party ("Claiming Party") claims that any Loss was result of the gross negligence or willful or intentional misconduct of another Party ("Responding Party") to this Agreement, then the Claiming Party must establish and a court of competent jurisdiction or an Arbitration Panel, as applicable, must find: (1) that action was taken by a fourth level or higher employee of **SBC-13STATE** or by a comparable level employee of SAGE; and (2) the action was taken with the specific intent to knowingly violate the law or the Agreement in a manner that would constitute a material breach and to knowingly harm the other Party or constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting life or property of the other Party; and (3) the intentional action or intentional failure to perform a manifest duty was the principal cause of a material adverse effect on the Responding Party. In the event that a Party to this Agreement establishes and a court of competent jurisdiction or an Arbitration Panel, as applicable, finds that any claimed Loss is the result of another Party's to this Agreement own gross negligence or willful or intentional misconduct (as provided in the Dispute Resolution Section, Section 26, of this Agreement), through findings of fact and conclusions of law issued by

such court or Arbitration Panel, then and only then the court of competent jurisdiction or Arbitration Panel, as applicable, award up to treble monetary damages excluding attorneys fees, interests and costs for such gross negligence or intentional conduct.

- 23.6 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER AGREEMENT(S) BETWEEN THE PARTIES, THE PARTIES VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE DISPUTE RESOLUTION SECTION, SECTION 26, OF THIS AGREEMENT (AS TO THE SUBJECT-MATTER OF THIS AGREEMENT) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT AND ALL DEALINGS, ARRANGEMENTS, NEGOTIATIONS, AND/OR COMMUNICATIONS BETWEEN THE PARTIES RELATING TO SBC-13STATE'S LWC OPERATIONS, INCLUDING SUCH MATTERS WITH RESPECT TO ACTUAL OR POTENTIAL WHOLESALE TERMS AND CONDITIONS APPLICABLE TO ANY AREA WITHIN THE DOMESTIC UNITED STATES IN WHICH SBC-13STATE OPERATES (BUT EXCLUDING ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF ANY SBC-13STATE TARIFFS, WHICH SHALL BE GOVERNED EXCLUSIVELY BY SUCH TARIFFS), AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY.

24. INDEMNITY

- 24.1 **Responsibility of Each Party for its Services:** Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 24.2 **Claims of Loss by Third Party(ies):** Except as otherwise expressly provided herein or in specific appendices and subject to Section 23, Limitation of Liability above, 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 gross 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 services and performance under this Agreement and SBC-13STATE's LWC Operations.
- 24.3 **Claims of Loss by an End User of a Party:** Except as otherwise expressly provided herein or in specific appendices and subject to Section 23 Limitation of Liability above including without limitation Section 23.5, in the case of any Loss alleged or claimed by an 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 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. Notwithstanding anything to the contrary in this Section 24.3 and this Agreement, SBC-13STATE shall have no liability to the end users of SAGE for claims arising from the provision of LWC to SAGE, including but not limited to claims related to the marketing or sales of its services provided hereunder, delayed restoral or nonrestoral of service, quality of service or any resulting billing or any other type of dispute. SAGE agrees to indemnify, defend, and hold SBC-13STATE harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by SAGE's end user for services rendered under this Agreement.
- 24.4 **Claims of Loss by a Party Against other Party:** Subject to Section 23 Limitation of Liability above, 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 services provided, or

performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: Indemnifying Party's use of 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.

- 24.5 **CARRIER Indemnity for Damage to Facilities:** SAGE shall reimburse SBC-13STATE for damages to SBC-13STATE's facilities utilized to provide services hereunder caused by the gross negligence or willful act of SAGE, its agents or subcontractors or SAGE's end user or resulting from SAGE'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. Upon reimbursement for damages, SBC-13STATE will cooperate with SAGE in prosecuting a claim against the person causing such damage. SAGE shall be subrogated to the right of recovery by SBC-13STATE for the damages to the extent of such payment. In addition, SAGE hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to SBC-13STATE facilities and hereby agrees to release, defend and indemnify SBC-13STATE, and hold SBC-13STATE harmless, from any claims for loss or damages, including but not limited to direct, indirect or consequential damages, made against SBC-13STATE by an end user customer, any telecommunications service provider or telecommunications user relating to such testing by SAGE.
- 24.6 **Indemnification Procedures:** Whenever a claim shall arise for indemnification under this Section 24.6, 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. 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. 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. 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. 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. 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. 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. 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. Each Party agrees 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 the Section 27, Non-Disclosure, of this Agreement.

25. BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES

- 25.1 SBC-13STATE shall include all charges under this Agreement on the monthly bill(s) rendered electronically within six (6) business days of the Bill Date as defined in Section 25.2 to SAGE (herein "Invoice").
- 25.1.1 Except as may be specifically permitted in this Agreement, SBC-13STATE may backbill SAGE for amounts found to be unbilled or underbilled six (6) months from the date on which such charges should have been billed to SAGE, to recover such charges incurred by SAGE within the six-month period preceding the date of the backbilling.
- 25.2 SAGE will establish monthly CABS billing dates (Bill Date) for each BAN, which Bill Date will be the same day month to month. A Party which changes, adds or deletes a BAN, which change was not initiated by the billed party, will provide written notification to the other Party's billing notice contact within 7 business days of making such change, addition, or deletion of a BAN. Each Party will provide one invoice associated with each BAN. Each Invoice must contain an invoice number (which will vary from month to month)
- 25.3 Monthly bills will be sent to address(es) requested by SAGE and subject to the capabilities of the applicable billing system.
- 25.4 Remittance in full will be due within thirty (30) days of the Invoice date. In accordance with Section 25.8, interest will apply on overdue amounts. When both Parties agree that an operations failure results in incorrect billing and such charges can be delineated from correct charges, SAGE will not have to pay nor escrow amounts for such charges deemed erroneous by both Parties.
- 25.5 If SAGE desires to dispute in good faith any Invoice charges, SAGE may either pay the Invoice charge then file its dispute in accordance with Section 25.8 or SAGE must complete all of the following actions before the Payment Due Date, unless otherwise agreed in writing by the Parties:
- 25.5.1 notify SBC-13STATE in writing which charges it disputes, including the total amount disputed ("Disputed Amounts"), in accordance with Section 25.6; and
- 25.5.2 pay all undisputed charges to SBC-13STATE; and
- 25.5.3 Unless SAGE pays SBC-13STATE the total Disputed Amounts, if SAGE's total outstanding and unpaid Invoice charges (calculated without regard to any dispute) exceed 5% of the then-current monthly billing under this Agreement, then SAGE must pay the excess into an interest-bearing escrow account, held by a third party escrow agent acceptable to SBC-13STATE, and provide evidence to SBC-13STATE that SAGE has met this escrow requirement. Until evidence that the full amount of the outstanding and unpaid Invoice charges that exceed 5% of the then-current monthly billing under this Agreement have been deposited into an escrow account that complies with this Section 25.5.3 is furnished to the SBC-13STATE, such Unpaid Charges will not be deemed to be "disputed" under Section 25.5. Failure to meet this escrow requirement when applicable shall permit SBC-13STATE, upon 10 days' written notice to SAGE, in addition to exercising any other rights or remedies it may have under law, to take any or all of the actions set forth in Sections 25.9.1 through 25.9.3.
- 25.6 A good faith billing dispute under this Agreement requires SAGE to provide a written claim to SBC-13STATE to permit SBC-13STATE to investigate the merits of the dispute. Such claims must identify the following to the respective SBC-13STATE billing and claims group(s): (a) the account number under which the Invoice was rendered; (b) the specific charge that SAGE believes was billed in error; (c) the Invoice date; and (d) the reason or grounds for the dispute. Disputed amounts will either be paid or escrowed in accordance with Section 25.5.3.
- 25.7 With regard to Section 25.5.1 and 25.6, information regarding Disputed Amounts shall be provided to the applicable SBC-13STATE billing and claims group pursuant to that group's requirements, in order to allow

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prompt processing and resolution of billing disputes. SBC-13STATE billing and claims organization has a 30-day target for claims investigation and resolution. Disputed Amounts not resolved with the applicable SBC-13STATE billing and claims organization may then be pursued by either Party in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 26.

- 25.8 SAGE billing inquiries and/or claims of overbilling by SBC-13STATE shall be referred to SBC-13STATE for investigation within six (6) months of the charge(s)' first appearance on an invoice to SAGE. Absent a claim and/or dispute by SAGE as to a charge within six (6) months from its first appearance on an invoice to SAGE, it will be deemed that SAGE has waived its right to dispute such charges. If the Parties determine that SAGE was billed incorrectly for items rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund to SAGE is due (SAGE had paid the disputed charges), an adjustment shall be made for the overcharges and shall be credited to SAGE within thirty (30) days of the Resolution Date, as defined below. If the refund is credited to SAGE within thirty (30) days of the Resolution Date, interest will not be applicable. If the refund is not credited within thirty (30) days of the Resolution Date, the interest rate applied will be the lesser of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in that state, compounded daily from the Bill Due Date to and including the date that the refund is actually made. The resolution date will be the date upon which Notice is deemed to have been received by SAGE under the Notice provisions in this Agreement ("Resolution Date"). If the dispute is decided in favor of SBC-13STATE, SAGE shall pay the Resolved Amount to SBC within thirty (30) days of the Resolution Date. To the extent that the Disputed Amounts have been escrowed and thus are paid directly from that escrow account, SAGE shall pay SBC-13STATE interest on the unpaid amount no longer in dispute ("Resolved Amount") if not paid within thirty (30) days of the Resolution Date. SAGE shall pay SBC-13STATE interest on the Resolved Amount at the lower of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in that state.
- 25.9 Failure to pay Invoice charges by the Payment Due Date (except for the Disputed Amounts, unless not paid into escrow as may be required hereunder) shall be grounds for termination of this Agreement. If SAGE fails to pay any Invoice charges billed under this Agreement, including any late payment charges or miscellaneous charges ("Unpaid Charges"), by the Payment Due Date (except for the Disputed Amounts, unless not paid into escrow when required hereunder), SBC-13STATE may notify SAGE in writing that it must remit all Unpaid Charges and complete all other actions set forth in Sections 25.5.1 through 25.5.3 within ten (10) days of the receipt of that notice. If by 5:00 p.m. Central Time of the 10th day following receipt of a notice under this Section, SAGE fails to (a) fully comply with each of Sections 25.3.1 through 25.3.3, or (b) make a payment in accordance with the terms of any mutually agreed payment arrangement then agreed to by the Parties, SBC-13STATE may, in addition to exercising any other rights or remedies it may have under law, take any or all of the following actions, without any further notice to SAGE:
- 25.9.1 suspend acceptance of/reject any application, request or order from SAGE for new or additional LWCALs or any other offering hereunder, or any changes or modifications thereto (e.g., adding or deleting any vertical feature to a LWCAL); and/or
 - 25.9.2 suspend completion of/cancel any pending application, request or order from SAGE for new or additional LWCALs or any other offering hereunder, or any changes or modifications thereto (e.g., adding or deleting any vertical feature to a LWCAL);
 - 25.9.3 subject to Section 25.15, discontinue providing LWC or any other offering furnished under this Agreement.
- 25.10 If by 5:00 p.m. Central Time of the 20th day following receipt of a notice under Section 25.9, SAGE fails to (a) fully comply with each of Sections 25.5.1 through 25.5.3, or (b) pay the Disputed Amounts (paid though still disputed), or (c) make a payment in accordance with the terms of any mutually agreed payment arrangement then agreed to by the Parties, SBC-13STATE may, in addition to exercising any other rights or remedies it may have under law, terminate this Agreement upon 180 days' written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of LWC End Users to other serving arrangements.

- 25.11 Interest will accrue on overdue charges that are not paid and not Disputed Amounts, and on Disputed Amounts to the extent not escrowed as required by this Section 25.
- 25.12 Notwithstanding any other provision of this Agreement, SBC-13STATE's exercise of any of its options under this Section 25:
- 25.12.1 will not delay or relieve SAGE's obligation to pay all charges on each and every Invoice on or before its applicable Payment Due Date, and
- 25.12.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, and the Service Assurance Plan.
- 25.13 SBC-13STATE shall have no liability to SAGE, its LWC End Users, or any other third party in the event of SBC-13STATE's exercise of any of its options under this Section.
- 25.14 Additional charges may become applicable under this Agreement following discontinuance of LWC and/or any other offering hereunder.
- 25.15 The Parties shall comply with any applicable laws regarding the discontinuance of LWC or any other offering hereunder. In the event of any inconsistency with any applicable law and this Section, Section 29, Severability, shall not affect the application of this Section to the full extent permitted by law.
- 25.16 SBC-13STATE reserves the right to require a deposit to secure the payment of future billings under this Agreement if:
- 25.16.1 SAGE fails to timely pay bills rendered to it, except such portion of a bill that is subject to a good faith, bona fide dispute and as to which SAGE has complied with the billing dispute and escrow provisions herein; or
- 25.16.2 In SBC-13STATE's reasonable judgment there has been an impairment of the established credit, financial health, or creditworthiness of SAGE. Such impairment will be determined from information available from available financial sources. SAGE shall be considered to be so impaired if it has not maintained a "BBB" or better long-term debt rating, or an "A-2" or better short-term debt rating by Standard & Poors for any consecutive six-month period; or
- 25.16.3 SAGE admits its inability to pay its debts as they come 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.
- In the event SAGE fails to submit the required deposit to SBC-13STATE within fifteen (15) days after written notice requiring such deposit as permitted by this Section, SBC-13STATE may, in addition to exercising any other rights or remedies it may have under law, take any of the actions set forth in Sections 25.9.1 through 25.9.3 without any further notice to SAGE.
- 25.17 As provided for herein, interest on overdue charges that are not Disputed Amounts, and on Disputed Amounts to the extent not escrowed will be assessed as follows:
- 25.17.1 If billed out of any SBC-8STATE billing system other than the SBC SOUTHWEST REGION 5-STATE Customer Records Information System (CRIS), interest will accrue from the day following the Payment 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.
- 25.17.2 If billed out of SBC SOUTHWEST REGION 5-STATE's CRIS, interest will accrue from the day following the Payment Due Date until paid at 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.

- 25.17.3 If billed out of any SBC MIDWEST REGION 5-STATE billing system, interest will accrue from the Payment 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 Payment Due Date to and including the date that the payment is actually made and available.
- 25.18 No later than twelve (12) months from the Effective Date of this Agreement, SAGE 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. CARRIER must use the CCD+ or the CTX transaction set. SAGE 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 Payment Due Date of each bill or Late Payment Charges will apply. SBC-12STATE is not liable for any delays in receipt of funds or errors in entries caused by SAGE or third parties, including SAGE's financial institution. SAGE is responsible for its own banking fees.
- 25.18.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. SAGE is responsible for any Late Payment Charges resulting from SAGE's failure to use electronic funds credit transfers through the ACH network.
- 25.18.2 No later than twelve (12) months from the Effective Date of this Agreement, SAGE 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 SAGE makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If SAGE makes payment through funds transfer via the ACH network, SAGE must use the CCD+ or the CTX transaction set. SAGE 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 Payment 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 SAGE or third parties, including SAGE's financial institution. SAGE is responsible for its own banking fees.
- 25.18.3 Invoices are deemed paid on the date of actual receipt of funds by SBC-13STATE, not on the date of application to the Invoice by SBC-13STATE. If payment is made by other than electronic funds credit transfers, then the Invoice will be deemed paid on the first Business Day after actual receipt.
- 25.19 If SAGE requests one or more additional copies of a bill, SAGE will pay SBC-13STATE 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.
- 25.20 Each additional copy of any Invoice provided for billing from SBC-13STATE CABS billing system will incur charges as specified in the applicable Access Service Tariff FCC Alternate Bill Media Section. Prices for bill media choices reflected in the applicable tariff as ICB will be billed as indicated in Appendix Pricing.

26. DISPUTE RESOLUTION

26.1 Finality of Disputes

26.1.1 Except as otherwise specifically provided for in this Agreement including without limitation, Section 25 above (as to billing disputes), no claim may be brought for any dispute arising from this Agreement and **SBC-13STATE's** LWC Operations 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.

26.2 Alternative to Litigation

26.2.1 Except as may otherwise be provided under any other agreement between the Parties, the Parties desire to resolve disputes arising out of or relating to this Agreement and with respect to all dealings, arrangements, negotiations and/or communications between the Parties relating to this Agreement and **SBC-13STATE's** LWC Operations without 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 and **SBC-13STATE's** LWC Operations.

26.3 Commencing Dispute Resolution

26.3.1 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 and **SBC-13STATE's** LWC Operations. 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:

26.3.1.1 Billing disputes: Billing Disputes between the Parties arising out of or relating to this Agreement shall be resolved in accordance with the procedures set forth in Section 25 above and Section 26 below.

26.3.1.2 Informal Dispute Resolution (described below); and

26.3.1.3 Formal Dispute Resolution (described below).

26.4 Informal Resolution of Non-Billing Disputes

26.4.1 Billing disputes which are addressed in Section 25 of this Agreement are not subject to this Informal Resolution Process.

26.4.2 Upon receipt by one Party of notice of a non-billing related dispute by the other Party pursuant to Section 26.3.1 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement and **SBC-13STATE's** LWC Operations. 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.

26.5 Formal Dispute Resolution

26.5.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 25 above (as to billing disputes) or Section 26.4 above (as to non-billing related disputes), then either Party may invoke the formal Dispute Resolution procedures described in this Section 26.5. Formal Dispute Resolution procedures may not be invoked by either Party with respect to non-billing related disputes earlier than the date that is sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 26.3.1 of this Agreement.

26.5.2 Claims Subject to Mandatory Arbitration

The following claims, if not settled through the informal procedure described in Section 25 above (as to billing disputes) will be subject to mandatory arbitration pursuant to Section 26.6 below:

26.5.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement and **SBC-13STATE's** LWC Operations in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 25 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 25, the Parties will annualize the actual number of months billed.

26.5.2.2 All Other Claims and Relief. Any claim and any relief other than as specified in Section 26.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate court with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

26.6 Arbitration

26.6.1 Disputes subject to mandatory arbitration (or when arbitration is agreed to by both Parties) 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. All arbitrations will be held in **Dallas, Texas** unless the Parties agree otherwise. 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 or otherwise, 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.

27. NON-DISCLOSURE

27.1 SAGE and **SBC-13STATE** anticipate and recognize that it will come into possession of technical or business information or data about the other Party or their respective customers as a result of this Agreement which will be considered confidential by the other Party. The Parties agree (1) to treat all such information as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. The Parties agree not to disclose confidential information of the other Party or its end users to any person or entity without first securing the written consent of such Party, except as may otherwise be permitted hereunder. The foregoing shall not apply to information which is in the public domain.

27.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section 27, that Party will immediately inform the other Party of the order or

request before such data is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of toll billing records of an individual residence or business end user customer.

- 27.3. This Section 27.3 will not preclude the disclosure by the Parties of information or data described in this Section to consultants, agents, or attorneys representing the respective Parties, or the Office of the Public Counsel for the State, or appropriate State Commissions or staffs, or FCC Staff, provided that these third-parties are bound by the same or comparable confidentiality requirements as the Parties to this Agreement.
- 27.4. The provisions of this Section 27.4 will remain in effect notwithstanding the termination of this Agreement, unless agreed to in writing by the Parties.

28. INTERPRETATION/JOINT WORK PRODUCT

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

29. SEVERABILITY

- 29.1 Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, in light of Section 5 (Scope; Integrated Offering), the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible, in recognition of and consistent with Section 5; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon 180 days written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of LWC End Users to other serving arrangements. In any situation in which the right to terminate under this Section 29.1 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only.

30. NO LICENSE

- 30.1 Except at otherwise expressly provided in this Agreement (including any 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.

31. INTELLECTUAL PROPERTY

- 31.1 Except as may otherwise be agreed as part of the Joint Development Project with respect thereto, any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

32. EXPENSES

- 32.1 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.

33. CONFLICT OF INTEREST

- 33.1 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.

34. END USER FRAUD

- 34.1 **SBC-13STATE** shall not be liable to SAGE for any fraud associated with any SAGE LWC End User's account, including 1+ IntraLATA toll, ported numbers, except as may be specified in the Appendix ABS.
- 34.2 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.
- 34.3 In cases of suspected fraudulent activity by an LWC End User or on an LWCAL, at a minimum, the cooperation referenced in Section 34.2 will include SAGE providing to **SBC-13STATE**, upon request, information concerning such LWC End User and any entity or person who terminate services to that LWC End User or LWCAL without paying all outstanding charges. SAGE is responsible for securing the LWC End User's permission to obtain such information.

[move to ABS Appendix]

35. AUDITS

- 35.1 Subject to the restrictions set forth in Section 27, Non-Disclosure, 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, 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.
- 35.1.1 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) and no greater than ninety (90) 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, except by mutual written consent by both Parties to extend.
- 35.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the sixtieth 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.
- 35.1.3 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

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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.

35.1.4 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.

35.1.5 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, and (iii) in each case, calculate and pay interest as provided in Section 25 (depending on the **SBC-13STATE** 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.

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

35.1.7 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 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 35.1. Any additional audit shall be at the requesting Party's expense.

36. COMPLIANCE AND CERTIFICATION

36.1 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.

36.2 Each Party warrants that it has obtained all necessary State certification required in each State covered by this Agreement prior to ordering any LWC or any other offering available hereunder. Upon request, each Party shall provide proof of certification.

36.3 Each Party shall be responsible for obtaining and keeping in effect all 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.

36.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

37. LAW ENFORCEMENT

37.1 **SBC-12STATE** and SAGE shall reasonably cooperate with each other in handling law enforcement requests as follows:

37.1.1 Intercept Devices:

37.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When **SBC-13STATE** receives a request associated with an LWC End User, it shall refer such request to SAGE, unless the request

directs **SBC-13STATE** to attach a pen register, trap-and-trace or form of intercept on **SBC-13STATE** facilities, in which case **SBC-13STATE** shall comply with any valid request.

37.1.2 Subpoenas:

37.1.2.1 If **SBC-13STATE** receives a subpoena for information concerning an LWC End User, it shall refer the subpoena to the requesting entity or person with an indication that SAGE is the responsible company, unless the subpoena requests records for a period of time during which **SBC-13STATE** was the LWC End User's service provider, in which case **SBC-13STATE** will respond to any valid request.

37.1.3 Emergencies:

37.1.3.1 If **SBC-13STATE** receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by its switch for an LWC End User, **SBC-13STATE** 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 LWC End User and SAGE agrees to indemnify and hold **SBC-13STATE** harmless against any and all such claims or Losses.

38. NETWORK MAINTENANCE AND MANAGEMENT

- 38.1 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.
- 38.2 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.
- 38.3 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.
- 38.4 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.
- 38.5 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.
- 38.6 SAGE shall not use LWC (or any service or facility related thereto or used in combination therewith) in any manner that interferes with or impairs service over any facilities of **SBC-13STATE**, its affiliated companies or other connecting telecommunications carriers, prevents any telecommunications 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.

39. CUSTOMER INQUIRIES

- 39.1 Except as otherwise required herein, including but not limited to Appendix OSS, each Party will refer all questions regarding the other Party's services or products directly to the other Party.
- 39.2 Except as otherwise required herein, including but not limited to Appendix OSS, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:
- 39.2.1 Direct the caller to the other Party if the caller inquires about the other Party's services or products; and
- 39.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 39.3 Except as otherwise provided in this Agreement, SAGE shall be the primary point of contact for SAGE's LWC End Users with respect to the services SAGE provides such LWC End Users.

40. SURVIVAL

- 40.1 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 are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 18, 23, 24, 25 (as to any billing/charges matters hereunder), 26 (as to any disputes hereunder), 27, and 45.

41. PUBLICITY

- 41.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement or business relationships by the other Party or any of its employees in any (i) written, electronic or oral advertising or presentation or (ii) brochure, newsletter, book, electronic database or other written matter of whatever nature, without prior written consent ("Publicity Matters"). Each Party will submit to each other for written approval, prior to publication or use, all Publicity Matters that mention or display one another's name and/or marks or contain symbols, pictures, or 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.
- 41.2 Notwithstanding Section 41.1, SBC-13STATE agrees that SAGE may refer to SBC-13STATE, orally and in writing, as SAGE's "preferred underlying network provider." Both Parties agree to cooperate in preparing and releasing a press release on or before April 1, 2004 that, at a minimum, shall state that SBC-13STATE and SAGE have entered into an historic 7-year agreement to replace the regulatory mandated UNE-P with a negotiated alternate arrangement that contains commercially reasonable terms and conditions, including price, and that will permit SAGE to pursue a sustainable business model in the local exchange service market. Any other reference to one Party by the other requires written consent of the first party. The Parties shall consult with one another prior to making any announcements or governmental filings relating to the subject matter of this Agreement and will not make any disclosure without the written consent of the other Party, unless such Party reasonably believes that it is required to do so pursuant to the rules of or a listing agreement (or other similar agreement) with a national securities exchange or the NASDAQ National Market (in which case the disclosing Party shall give the other Party hereto reasonable prior notice of and an opportunity to comment on such disclosure).

42. ASSIGNMENT

- 42.1 SAGE may not assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to SAGE and SBC-13STATE and with SBC-13STATE's prior written consent, which consent shall not be unreasonably withheld.

43. NOTICES

- 43.1 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, point of contact or specific manner, shall be: (a) delivered personally; or (b) delivered by express overnight delivery service; or (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by facsimile; provided that a paper copy is also sent by a method described above in subsections (a), (b) or (c).
- 43.2 Except as otherwise explicitly provided for in this Agreement, Notices will be deemed given as of the earliest of: (a) the date of actual receipt; or (b) the next Business Day when sent via express overnight delivery service; or (c) five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or (d) 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.
- 43.3 If the last day on which a notice may be given is not a Business Day, then the last day shall be moved the next Business Day.
- 43.4 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	SAGE CONTACT	SBC-13STATE CONTACT
NAME/TITLE	Network Services Attention: Kim Frey	Contract Management ATTN: Notices Manager
STREET ADDRESS	805 Central Expressway South, Suite 100	311 S. Akard, 9 th Floor Four SBC Plaza
CITY/STATE/ZIP CODE	Allen, TX 75013-2789	Dallas, TX 75202
FACSIMILE NUMBER	214-495-4740	214-464-2006

- 43.4.1 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.

44. THIRD PARTY BENEFICIARIES

- 44.1 This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

45. TAXES

- 45.1 SAGE shall 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(es)") imposed on or with respect to LWC including those Taxes the incidence of which is imposed on **SBC-13STATE** other than taxes imposed on the income of **SBC-13STATE**. SAGE shall reimburse **SBC-13STATE** for the amount of any such Taxes that **SBC-13STATE** is required to pay or collect. SAGE agrees to indemnify and hold harmless **SBC-13STATE** for any costs incurred by **SBC-13STATE** as a result of actions taken by the applicable taxing authority to collect the Tax from **SBC-13STATE** due to the failure of SAGE to pay or collect and remit any Tax to such authority. Nothing shall prevent **SBC-13STATE** from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills SAGE for such Tax, or (2) it collects the Tax from SAGE. Notwithstanding anything in this Agreement to the contrary, SAGE shall be liable for and **SBC-13STATE** 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.

- 45.1.1 The Parties acknowledge that SAGE shall not be required to pay any such Taxes in duplicate, i.e., if SAGE has already paid to a taxing authority, and **SBC-13STATE** also pays the same Taxes in

duplicate, then **SBC-13STATE** will be responsible to gain the appropriate reimbursement from the taxing authority and not SAGE.

- 45.2 To the extent a purchase of LWC is claimed by SAGE to be for resale and, as such, SAGE claims the purchase is subject to tax exemption, SAGE shall furnish **SBC-13STATE** 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 SAGE for any period prior to the date that SAGE presents a valid certificate. If applicable law excludes or exempts a purchase of LWC provided under this Agreement from a Tax, but does not also provide an exemption procedure, then **SBC-13STATE** will not collect such Tax if SAGE (a) furnishes **SBC-13STATE** with a letter signed by an officer of SAGE claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies **SBC-13STATE** with an indemnification agreement, reasonably acceptable to **SBC-13STATE**, which holds **SBC-13STATE** harmless from any Tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 45.3 With respect to any Tax or Tax controversy covered by this Section, SAGE 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. SAGE will ensure that no lien is attached to any asset of **SBC-13STATE** as a result of any contest. SAGE 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 **SBC-13STATE** shall be refunded to **SBC-13STATE**.
- 45.4 If a Party is assessed by a taxing authority or jurisdiction any Tax which it has also paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.

46. NON-WAIVER

- 46.1 The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times, in full force and effect, unless terminated or amended as provided for herein.

47. DISCLAIMER OF WARRANTIES

- 47.1 **SBC-13STATE** MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO OFFERINGS PROVIDED HEREUNDER. ADDITIONALLY, **SBC-13STATE** ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY SAGE OR ANY OTHER PERSON OR ENTITY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

48. RELATIONSHIP OF THE PARTIES

- 48.1 This Agreement shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

49. AMENDMENTS AND MODIFICATIONS

- 49.1. 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 each Party. 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.

50. AUTHORITY

- 50.1 Each of the **SBC-13STATE** 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-13STATE** 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-13STATE** ILEC. Each of the **SBC-13STATE** ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.
- 50.2 SAGE Telecom, Inc. represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Sage Telecom, Inc. represents and warrants that it is the General Partner of Sage Telecom of Texas, L.P., a duly organized partnership under the laws of the State of Texas.
- 50.3 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.

51. COUNTERPARTS

- 51.1 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.

52. PRESERVATION OF LEGAL POSITIONS

- 52.1 Except as specifically modified by this Agreement with respect to their mutual obligations herein, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.
- 52.2 It is the express intent of the Parties that this Agreement is a private, commercial arrangement that is not subject to Sections 251 and/or 252, or any similar state law. However, in the event that this Agreement is subjected to any of the foregoing and/or is terminated or invalidated pursuant to Sections [1.3], 18.6, and/or 18.7, it is the express intent and agreement of the Parties that neither of them shall be deemed or otherwise determined to have waived, and each Party shall have hereby expressly reserved, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in any relevant interconnection agreement(s) (including intervening law rights asserted by either Party via written notice predating this Agreement) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into any interconnection agreement(s) between them as of the Effective Date of this Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et. Al ("USTA") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002). The foregoing shall apply with

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respect to those states, and shall apply retroactively to prior to the effectiveness of this Agreement, where this Agreement is (i) subjected to Sections 251 and/or 252, or any similar state law, but not terminated or invalidated as may be permitted herein, and then applicable as to any person or entity not a Party to this Agreement, and/or (ii) is so terminated or invalidated. This provision shall be liberally construed in accordance with its intent, so as to ensure that the respective positions of the Parties with respect to any such orders, decisions, legislation or proceedings and any remands thereof (including under any relevant interconnection agreement(s)), shall not have been affected as a result of or otherwise arising from this Agreement in those states where this Agreement is subjected to Sections 251 and/or 252, or any similar state law, or is so terminated or invalidated.

53. ENTIRE AGREEMENT

- 53.1 The terms and conditions, including pricing, contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, and other documents or instruments referred to herein and incorporated into this Agreement by reference constitutes 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.

PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

Please indicate the SAGE OCN & ACNA next to the state(s) in which SAGE is authorized to do business and in which SAGE is requesting to purchase LWC:

	<u>OCN #</u>	<u>ACNA</u>		<u>OCN #</u>	<u>ACNA</u>
ARKANSAS	8000	SGZ	MISSOURI	9078	SGZ
CALIFORNIA	9239	SGZ	OHIO	777A	SGZ
ILLINOIS	9270	SGZ	OKLAHOMA	2237	SGZ
INDIANA	9846	SGZ	WISCONSIN	9813	SGZ
KANSAS	5839	SGZ	TEXAS	8767	SGZ
MICHIGAN	8152	SGZ			

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Signatures

Sage Telecom of Texas L.P., and Sage Telecom, Inc.

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 Wisconsin Bell Inc. d/b/a SBC Wisconsin,
Nevada Bell Telephone Company d/b/a SBC Nevada,
Pacific Bell Telephone Company d/b/a SBC California,
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

by Sage Telecom, Inc., on its own behalf and as
General Partner of Sage Telecom of Texas, L.P.

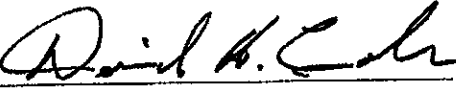
by SBC Telecommunications, Inc., the authorized agent
of each

Signature: 

Name: Dennis M. Houlihan

Title: Chairman of the Board
President and Chief Executive Officer

Date: April 21, 2004

Signature: 

Name: David A. Cole

Title: President - Industry Markets

Date: April 21, 2004

APPENDIX 800

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APPENDIX 800 (Toll Free Calling Database)

1. INTRODUCTION/DESCRIPTION

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Wholesale Complete between SBC-13STATE and CARRIER, and sets forth the terms and conditions for use of the Toll Free Calling Database as part of LWC.
- 1.2 As part of LWC, the use of the Toll Free Calling Database supports the processing of toll free calls (e.g., 800 and 888) originating from a LWC AL where identification of the appropriate carrier (800 Service Provider) to transport the call is dependent upon the full ten digits of the toll free number (e.g., 1+800+NXX+XXXX). Use of the Toll Free Calling Database includes all 800-type dialing plans (i.e., 800, 888, and other codes as may be designated in the future).
- 1.3 Use of the Toll Free Calling Database provides the carrier identification function required to determine the appropriate routing of an 800 number based on the geographic origination of the call, from a specific or any combination of NPA/NXX, NPA or LATA call origination detail.

2. GENERAL TERMS AND CONDITIONS

- 2.1 Use of the Toll Free Calling Database provided under the Agreement and this Appendix is only available as part of LWC.
- 2.2 Use of the Toll Free Calling Database is offered separate and apart from other network capabilities that may be available for use as part of LWC, e.g., end office 800 (SSP) functionality and (CCS/SS7) signaling. This Appendix is separate from the terms and conditions that may be applicable for such related elements, and in no way shall this Appendix be construed to circumvent the terms and conditions as specified for such related elements. This Appendix is only applicable when CARRIER is purchasing LWC, and then only as part of the LWC being provided (e.g., not for use separately or with respect to any other offering by SBC-13STATE).
- 2.3 Each Party reserves the right to modify its network pursuant to other specifications and standards, which may include Telcordia's specifications, defining specific service applications, message types, and formats, that may become necessary to meet the prevailing demands within the U.S. telecommunications industry. All such changes shall be announced in accordance with the then prevailing industry standard procedures. Each Party shall work cooperatively to coordinate any necessary changes.
- 2.4 CARRIER acknowledges and agrees that CCS/SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of SBC-13STATE's CCS/SS7 network and its 800 database. CARRIER further agrees that SBC-13STATE, at its sole discretion, may employ certain automatic and/or manual overload controls within SBC-13STATE's CCS/SS7 network to guard against these detrimental effects.
- 2.5 During periods of 800 database system congestion, SBC-13STATE shall utilize an automatic code gapping procedure to control congestion that may affect the service of all customers of SBC-13STATE's 800 database. For example, during an overload condition, the automatic code gapping procedures shall tell SBC-13STATE's 800 database when to begin to drop one out of three queries received. This code gapping procedure shall be applied uniformly to all users of SBC-13STATE's 800 database. SBC-13STATE reserves the right to manually invoke the automatic code gapping procedure to control congestion.
- 2.6 CARRIER shall not use the database information to copy, store, maintain or create any table or database of any kind or for any purpose. CARRIER shall only use SBC-13STATE's Toll Free Calling Database with the use of LWC.

APPENDIX 911

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APPENDIX 911

TERMS AND CONDITIONS FOR PROVIDING CONNECTION TO E911 UNIVERSAL EMERGENCY NUMBER SERVICE

1. INTRODUCTION

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and CARRIER, and sets forth terms and conditions for E911 Service provided as part of LWC by the applicable SBC-13STATE ILEC.

2. DEFINITIONS

- 2.1 **"911 Trunk"** means a trunk capable of transmitting Automatic Number Identification (ANI) associated with a call to 911 from an SBC-13STATE Serving Switch to the E911 system.
- 2.2 **"Automatic Location Identification" or "ALI"** means the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and, in some cases, supplementary emergency services information.
- 2.3 **"Automatic Number Identification" or "ANI"** means the telephone number associated with the access line from which a call to 911 originates.
- 2.4 **"Company Identifier" or "Company ID"** means a three to five (3 to 5) character identifier chosen by the Local Exchange Carrier that distinguishes the entity providing dial tone to the End User. The Company Identifier is maintained by NENA in a nationally accessible database.
- 2.5 **"Database Management System" or "DBMS"** means a system of manual procedures and computer programs used to create, store and update the data required to provide Selective Routing and/or Automatic Location Identification for 911 systems.
- 2.6 **"E911 Customer"** means a municipality or other state or local government unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at a minimum, for emergency police and fire services through the use of one telephone number, 911.
- 2.7 **"E911 Universal Emergency Number Service" (also referred to as "Expanded 911 Service" or "Enhanced 911 Service") or "E911 Service"** means a telephone exchange communications service whereby a public safety answering point (PSAP) answers telephone calls placed by dialing the number 911. E911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911. E911 provides completion of a call to 911 via dedicated trunking facilities and includes Automatic Number Identification (ANI), Automatic Location Identification (ALI), and/or Selective Routing (SR).
- 2.8 **"Emergency Services"** means police, fire, ambulance, rescue, and medical services.
- 2.9 **"Emergency Service Number" or "ESN"** means a three to five (3 to 5) digit number representing a unique combination of emergency service agencies (Law Enforcement, Fire, and Emergency Medical Service) designated to serve a specific range of addresses within a particular geographical area. The ESN facilitates selective routing and selective transfer, if required, to the appropriate PSAP and the dispatching of the proper service agency (ies).
- 2.10 **"National Emergency Number Association" or "NENA"** means the National Emergency Number Association is a not-for-profit corporation established in 1982 to further the goal of "One Nation-One Number". NENA is a networking source and promotes research, planning, and training. NENA strives to educate, set standards and provide certification programs, legislative representation and technical assistance for implementing and managing 911 systems.

- 2.11 **"Public Safety Answering Point" or "PSAP"** means an answering location for 911 calls originating in a given area. The E911 Customer may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs answer calls; secondary PSAPs receive calls on a transfer basis. PSAPs are public safety agencies such as police, fire, emergency medical, etc., or a common bureau serving a group of such entities.
- 2.12 **"Selective Routing" and "Selective Router" or "SR"** means the routing and equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller. Selective routing is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed.

3. SBC-13STATE RESPONSIBILITIES

- 3.1 SBC-13STATE shall provide and maintain such equipment at the 911 SR and the DBMS as is necessary to perform the 911 services set forth herein when SBC-13STATE is the 911 Service Provider. SBC-13STATE shall provide 911 Service to CARRIER as described in this section in a Rate Center in which CARRIER is authorized to provide local telephone exchange service and has LWC End Users, and SBC-13STATE is the 911 Service Provider. This shall include the following:
- 3.2 Call Routing
- 3.2.1 SBC-13STATE will switch 911 calls from CARRIER's LWC lines through the 911 SR to the designated primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP.
- 3.2.2 SBC-13STATE will forward the calling party number (ANI) of CARRIER's LWC lines and the associated Service Location Address provided by CARRIER for its LWC End Users to the PSAP for the Automatic Location Identification (ALI) display. If no ANI is forwarded to the 911 SR that serves the SBC-13STATE Serving Switch where CARRIER's LWC line is provisioned, SBC-13STATE will forward an Emergency Service Central Office (ESCO) identification code for display at the PSAP. If ANI is forwarded, but no ALI record is found in the E911 DBMS, SBC-13STATE will forward a "No Record Found" to the PSAP and report this "No Record Found" condition to the CARRIER in accordance with NENA standards.
- 3.3 911 Trunking
- 3.3.1 SBC-13STATE shall provide and maintain sufficient dedicated 911 trunks from SBC-13STATE's Serving Switch where CARRIER's LWC line is provisioned to the 911 SR and from the 911 SR to the PSAP of the E911 Customer, according to provisions of the appropriate state Commission-approved tariff and documented specifications of the E911 Customer.
- 3.4 911 Database Maintenance
- 3.4.1 Where SBC-13STATE manages the E911 database, SBC-13STATE shall store the CARRIER's LWC End User 911 Records [that is, the name, address, and associated telephone number(s) for each of CARRIER's LWC End Users] in the electronic data processing database for the 911 DBMS.
- 3.4.2 Where SBC-13STATE manages the DBMS, SBC-13STATE shall establish a process for the management of NPA splits by populating the DBMS with the appropriate NPA codes.
- 3.4.3 Where SBC-13STATE is the 911 Service Provider, SBC-13STATE shall provide CARRIER LWC End User location information to the PSAP and shall accept calls from PSAPs concerning 911 service for CARRIER LWC End Users. CARRIER and SBC-13STATE agree to work cooperatively on requests from a PSAP in an expeditious manner if such a request requires participation from both parties.

3.5 Where SBC-13STATE is the 911 Database Provider,

- 3.5.1 SBC-13STATE, upon receipt of an LSR from CARRIER for LWC End User records, will perform any necessary error correction of a LWC End User record if said record errs as a result of 911 data validation processes and that such error can be corrected without additional information provided to SBC-13STATE from CARRIER. If the LWC record does not pass 911 data validation processes and requires additional input from CARRIER, CARRIER and SBC-13STATE will work cooperatively to correct such error.
- 3.5.2 SBC-13STATE shall use the appropriate service order process to update and maintain CARRIER LWC End User service information utilized for inclusion in the Automatic Location Identification (ALI) database used to support 911/E911 on a non-discriminatory basis.
- 3.5.3 SBC-13STATE, upon receipt of a change to the Master Street Address Guide (MSAG) from an authorized E911 Customer, will update CARRIER LWC End User records in the ALI Database. SBC-13STATE will update all CARRIER LWC End User records in the ALI database affected by such a change in accordance with the MSAG change submitted by the E911 Customer. The Parties agree to work cooperatively to address discrepancies in the 911 database.
- 3.5.4 SBC-13STATE, upon receipt of an ALI Database Error Report from an authorized E911 Customer, will update CARRIER LWC End User records in the ALI Database in accordance with the change to the ALI record submitted by the E911 Customer. The Parties agree to work cooperatively to address discrepancies in the 911 database.
- 3.5.5 SBC-13STATE, upon receipt of a "No Record Found" (NRF) or Misroute report from an authorized E911 Customer, SBC-13STATE will investigate and resolve said NRF or Misroute report on CARRIER's behalf. If said NRF or Misroute report requires assistance from CARRIER, CARRIER and SBC-13STATE will work cooperatively to resolve all NRFs and Misroutes in an expeditious manner.

4. CARRIER RESPONSIBILITIES

- 4.1 CARRIER or its representatives shall be responsible for providing CARRIER's LWC End User Records to SBC-13STATE for inclusion in SBC-13STATE's 911 DBMS on a timely basis. CARRIER shall provide SBC-13STATE with accurate and complete information regarding CARRIER's LWC End User(s) in a format and time frame prescribed by SBC-13STATE for purposes of E911 administration.
- 4.2 CARRIER shall order and provide accurate service address information for all LWC orders using the Local Service Request (LSR) process established by SBC-13STATE. Where SBC-13STATE is the 911 Service Provider, SBC-13STATE shall provide access to 911/E911 services for CARRIER's LWC End Users in the same manner that it provides such access to SBC-13STATE own retail End Users. This access shall include 911 call routing to a Public Safety Answering Point (PSAP) designated to receive a 911 call from a CARRIER LWC End User based on the service location of that LWC End User.
- 4.3 CARRIER is responsible for collecting from its LWC End Users and remitting to the appropriate municipality or other governmental entity any applicable 911 surcharges assessed on the local service provider and/or LWC End Users by any municipality or other governmental entity within whose boundaries the CARRIER provides local exchange service using LWC.
- 4.4 Where SBC-13STATE is the 911 Database Provider for CARRIER and E911 Customer, SBC-13STATE will not seek compensation from CARRIER for the 911 Database Maintenance functions described within this Appendix, but instead will bill the E911 Customer for all CARRIER LWC records residing in the appropriate SBC-13STATE 911 Database consistent with applicable law. CARRIER hereby assigns, to the full extent permitted by law, all rights, abilities, and other authorizations to allow SBC-13STATE to bill and retain any and all remittances for performing all 911 Database maintenance functions described within this Appendix, and to otherwise act in CARRIER's stead with respect thereto.

4.4.1 CARRIER shall not bill the E911 Customer for any CARRIER LWC records residing in an SBC-13STATE 911 Database, unless SBC-13STATE is prohibited by law, tariff, or otherwise from billing the E911 Customer for the 911 Database maintenance functions within this Appendix. In any such situation, CARRIER shall bill the E911 Customer for any CARRIER LWC records residing in an SBC-13STATE 911 Database, and shall timely tender the remittances upon receipt from the E911 Customer to SBC-13STATE in a manner as agreed to by the Parties.

4.5 All CARRIER LWC End User 911 Records, in accordance with NENA standards, will use the appropriate SBC-13STATE NENA Company ID to identify the dial tone provider of record.

5. METHODS AND PRACTICES

5.1 With respect to all matters covered by this Appendix, each Party will comply with all of the following to the extent that they apply to 911 Service: (i) all FCC and applicable state Commission rules and regulations, (ii) any requirements imposed by any Governmental Authority other than a Commission, (iii) the terms and conditions of SBC-13STATE's 911/E911 and any other emergency services tariff(s) and (iv) the principles expressed in the recommended standards published by NENA.

6. CONTINGENCY

6.1 The terms and conditions of this Appendix represent a negotiated plan for providing 911 Service in conjunction with LWC.

6.2 The Parties agree that the 911 Service is provided for the use of the E911 Customer, and recognize the authority of the E911 Customer to establish service specifications and grant final approval (or denial) of service configurations offered by SBC-13STATE and CARRIER.

7. LIABILITY

7.1 In addition to the requirements of this Appendix 911, the Parties agree 911 and E911 Services will be provided in accordance with Applicable Law.

APPENDIX OPERATOR SERVICES AND DIRECTORY ASSISTANCE (OS/DA)

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APPENDIX OS/DA

1. INTRODUCTION AND SCOPE

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and CARRIER, and sets forth terms and conditions for Operator Services (OS) and Directory Assistance (DA) calls provided as part of LWC by the applicable SBC-13STATE ILEC.
- 1.2 In the context of LWC only, SBC-13STATE will offer Operator Services (OS) and Directory Assistance (DA) to CARRIER's LWC End Users at the rates, terms and conditions set forth in this section and Appendix Pricing. OS/DA is provided to CARRIER hereunder for use only with LWC.
- 1.3 SBC-13STATE makes this voluntary OS/DA offering conditional on CARRIER agreeing to use SBC-13STATE OS and DA platforms for the Term and Extended Term, if any, and during that period, CARRIER agreeing not to order some or all of CARRIER's OS and/or DA needs from a section 251-252 Interconnection Agreement or SBC-13STATE Wholesale Services Tariff (e.g. Indiana Bell Tariff 20R, Part 19, Sec. 7 Directory Assistance, and Sec. 8 Operator Services).
 - 1.3.1 CARRIER's LWC End Users shall have the same ability to reach SBC-13STATE OS and DA platforms as all SBC-13STATE retail end users served via the same SBC-13STATE end office switch providing the LWCAL from which the OS/DA call is originated, including the following:
 - Dialing "0" or "0+NPA-NXX-xxxx" and obtaining Operator Services, such as:
 - Operator-assisted dialing
 - Placing a Collect Call
 - Placing a "Bill to Third Number" Call
 - Obtaining Busy Line Verification
 - Attempting a Busy Line Interrupt
 - Dialing "411" or "555-1212" and reaching a Directory Assistance Operator for purposes such as
 - Retrieving a Published Telephone Number
 - DA Call Completion to a Retrieved Tel Number
 - National Directory Assistance
 - Reverse Directory Assistance
 - Business Category Search (where available)
 - 1.3.2 CARRIER's LWC End Users shall be answered by SBC-13STATE OS and DA platforms with the same priority as SBC-13STATE retail end users served via the same SBC-13STATE end office switch providing the LWCAL from which the OS/DA call is originated. Any technical difficulties in reaching the SBC-13STATE OS/DA platform (i.e. cable cuts in the OS/DA trunks, unusual OS/DA call volumes, labor strikes at the OS/DA call centers, etc.) will be experienced at parity with SBC-13STATE retail end users served via that same SBC-13STATE end office switch.

2. SPECIFICS OF OS OFFERING

- 2.1 Operator Services Rate Structure. Where technically feasible and/or available, SBC-13STATE will differentiate its OS charges by whether the CARRIER LWC End User is receiving
 - 2.1.1 Manual OS call assistance (i.e., provided a live, human Operator), for which a per work second charge will apply, and
 - 2.1.2 Automated OS call assistance (i.e., an OS switch equipment voice recognition feature, functioning either fully or partially without live, human Operators), where a flat rate per call charge will apply.
 - 2.1.3 See Appendix Pricing for the full set of OS recurring rates that apply to LWC.

- 2.2 Operator Services Call Processing. Whether manual or automated, **SBC-13STATE** will provide the following services when originating a 0+ or 0- call from a LWCAL, regardless of whether 1-411-dialed DA usage is also requested from that LWCAL:
- 2.2.1 General Operator Assistance. The individual originating a 0+ or 0- call from a LWCAL asks the Operator to provide local and intraLATA dialing assistance for the purposes of completing calls or requesting information on how to place calls; handling emergency calls, handling credits and handling person-to-person calls.
 - 2.2.2 Calling Card. The individual originating a 0+ or 0- call from a LWCAL provides operator with a Calling Card number for billing purposes.
 - 2.2.3 Collect. The individual originating a 0+ or 0- call from a LWCAL asks the operator to bill the call to the called number, provided such billing is accepted by the called number.
 - 2.2.4 Third Number Billed. The individual originating a 0+ or 0- call from a LWCAL asks the operator to bill the call to a different number than the calling or called number.
 - 2.2.5 Busy Line Verification (BLV). A service in which the Operator, upon request, will check the requested line for conversation in progress and advise the caller being served via LWC of the status.
 - 2.2.6 Busy Line Interrupt (BLI). A service in which the caller asks the Operator to interrupt a conversation in progress, to determine if one of the parties is willing to speak to the caller from a LWCAL requesting the interrupt. Busy Line Interrupt service applies even if no conversation is in progress at the time of the interrupt attempt, or when the parties interrupted refuse to terminate the conversation in progress.

3. SPECIFICS OF DA OFFERING

- 3.1 Directory Assistance Rate Structure. Where technically feasible and/or available, **SBC-13STATE** will NOT differentiate its DA products by type, and instead will charge for DA products on a flat rate per call.
- 3.1.1 See Appendix Pricing for the full set of DA recurring rates that apply to LWC.
- 3.2 Directory Assistance Call Processing. Where technically feasible and/or available, **SBC-13STATE** will provide the following DA Services when originating a Directory Assistance call from a LWCAL, regardless of whether Operator Services is also requested from that LWCAL:
- 3.2.1 Local Directory Assistance. Consists of providing published name, address and telephone number to the individual originating a directory assistance call from a LWCAL.
 - 3.2.2 Directory Assistance Call Completion (DACC) [Sometimes also known as "Express Call Completion" (ECC)]. A service in which a local or an intraLATA call to the requested number is completed on behalf of the individual originating the call from a LWCAL, utilizing an automated voice system or with operator assistance.
 - 3.2.3 National Directory Assistance (NDA) [Where Available]. A service whereby callers may request directory assistance information outside their LATA or Home NPA (the geographic numbering plan from which a call originates) for a listed telephone number for residential, business and government accounts throughout the 50 states.
 - 3.2.4 Reverse Directory Assistance (RDA) [Where Available]. An Information Service consisting of providing listed local and national name and address information associated with a telephone number provided by the individual originating the call from a LWCAL.
 - 3.2.5 Business Category Search (BCS) [Where Available]. A service in which an individual calling from a LWCAL request business telephone number listings for a specified category of business, when the name of the business is not known. Telephone numbers may be requested for local and national businesses. A maximum of two requested telephone numbers will be provided for each BCS call.

4. **OS/DA NON-RECURRING CHARGES FOR LOADING AUTOMATED CALL GREETING (I.E., BRAND ANNOUNCEMENT), RATES AND REFERENCES**

- 4.1 In all current **SBC-13STATE** OS/DA switches in **SBC-13STATE** service area, the incoming OS/DA call is automatically answered by a pre-recorded greeting loaded into the switch itself, prior to being handled by an automated equipment or live operator.
- 4.1.1 CARRIER may have a CARRIER-selected brand name or other greeting for calls originating from a LWCAL by providing a pre-recorded announcement to **SBC-13STATE** in conformity with the format, length, and other requirements specified for all carriers on the SBC CLEC website (<https://clec.sbc.com>). **SBC-13STATE** will then perform all of the loading and testing of the announcement for each applicable switch prior to live traffic. CARRIER may also change its pre-recorded announcement at any time by providing a new pre-recorded announcement in the same manner, for subsequent loading and testing charges.
- 4.1.2 If CARRIER does not wish to brand the OS/DA calls, CARRIER may also have silence used instead upon connecting with the OS/DA switch by having **SBC-13STATE** load a recording of silence into the automatic, pre-recorded announcement slot, set for the shortest possible duration allowed by the switch, to then be routed to automated or live operators as with all other OS/DA calls.
- 4.1.3 **SBC-13STATE** makes no warranties or representations that silent announcements will be perceived by end users as ordinary mechanical handling of OS/DA calls.
- 4.1.3.1 CARRIER understands that it is not technically feasible to avoid the automatic pre-recorded announcement function in these OS/DA switches, and that if it does not brand the call, CARRIER agrees to indemnify and hold **SBC-13STATE** harmless from any regulatory violation, consumer complaint, or other sanction for failing to identify the OS/DA provider to the dialing end user.
- 4.1.3.2 **SBC-13STATE** understands that it must make the silent recording play for the shortest possible duration technically feasible for each applicable switch, and accepts responsibility for any regulatory violation, consumer complaint, or other sanction stemming from failure to do so (i.e. call handling delay), but otherwise it has no responsibility if a silent announcement is chosen by CARRIER.
- 4.1.4 **SBC-13STATE** will be responsible for loading the CARRIER-provided recording or the silent announcement into all applicable OS and/or DA switches prior to live traffic, testing the announcement for sound quality at parity with that provided to **SBC-13STATE** retail end users. CARRIER will be responsible for paying the initial announcement loading charges, and thereafter, the per-call charge (primarily to cover switch maintenance), as well as any subsequent loading charges if a new brand announcement is provided as specified above. Branding load charges are Nonrecurring and are found in Appendix LWC Pricing.
- 4.1.5 In the event the technical makeup of a particular **SBC-13STATE** OS switch does not route the incoming call through an automatic pre-recorded announcement, the foregoing subsections do not apply, and CARRIER and **SBC-13STATE** agree to make alternative arrangements for OS branding announcements.
- 4.1.6 Where the phraseology is the same for OS and DA branding, only one branding charge will apply.
- 4.2 In all current **SBC-13STATE** OS/DA switches, the applicable CARRIER-charged retail OS/DA rates and a CARRIER-provided contact number (e.g., a business office or repair call center) are loaded into the system utilized by the OS and/or DA operator.
- 4.2.1 **SBC-13STATE** will quote to any individual calling from a LWCAL, when asked, the CARRIER's retail rates for all OS/DA services as loaded. If further inquiries are made about rates or billing and/or "business office" questions, the OS and DA operators shall direct the calling party's inquiries to the CARRIER-provided contact number.

- 4.2.2 SBC-13STATE will be responsible for loading the CARRIER-provided OS/DA retail rates and the CARRIER-provided contact numbers into the OS/DA switches. Rate/Reference load charges are Nonrecurring and are found in Appendix Pricing.

APPENDIX BASIC ANALOG SWITCHING AND NON-DEDICATED TRANSPORT

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APPENDIX BASIC ANALOG SWITCHING AND NON-DEDICATED TRANSPORT

1. INTRODUCTION

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete between SBC-13STATE and CARRIER, and sets forth additional terms and conditions under which SBC-13STATE will provide Basic Analog Switching and non-dedicated transport, each as part of a LWCAL

2. BASIC ANALOG SWITCHING

- 2.1 SBC-13STATE Serving Switch shall use the routing instructions resident in it to direct all CARRIER traffic originated by, or terminated to, an LWCAL.
- 2.2 SBC-13STATE will allow CARRIER to designate the features and functions that are available on a particular LWCAL to the extent such features and functions are loaded and activated in that LWC End User's Serving Switch for use with Basic Analog Switching. When CARRIER purchases LWCAL CARRIER will be required to designate the features and functions that are to be included on the LWCAL.
- 2.3 As part of LWC and the use of non-dedicated transport, SBC-13STATE will also provide the use of its tandem switching for the transport of toll traffic where an interexchange carrier (including the LWCAL's interLATA PIC/intraLATA LPIC) is not directly connected to the Serving Switch, and where SBC-13STATE is providing for the transport of "1+" intraLATA toll traffic as provided herein. SBC-13STATE tandem switching is only provided as part of routing traffic that originates from, or terminates to, an LWCAL.
- 2.4 LWC as provided by SBC-13STATE includes standard Central Office treatments (e.g., busy tones, vacant codes, fast busy, etc.), supervision and announcements.
- 2.5 SBC-13STATE will control congestion points such as those caused by radio station call-ins and network routing abnormalities using appropriate network capabilities. CARRIER agrees to respond to SBC-13STATE's notifications regarding network congestion.
- 2.6 SBC-13STATE will perform testing on LWC lines for CARRIER in the same manner and frequency that SBC-13STATE performs for its own retail or resale customers for an equivalent service.
- 2.7 SBC-13STATE will repair and restore any SBC-13STATE equipment that may adversely impact LWC.
- 2.8 Where the technical capability is available, SBC-13STATE will provide usage detail for the Basic Analog Switching used in a LWC-AL in accordance with and subject to other application provisions of this Agreement. Refer to DUF Appendix for daily usage detail records, and the usage record provisions, including those addressing Daily Usage Feed (DUF) provisions of this Agreement.
- 2.9 Where technically feasible, SBC-13STATE will provide CARRIER with the use of the functionality to block incollect calls (collect calls, calling card calls and calls billed to 3rd parties), 900 calls, international calls (ISDD), and toll calls) by line or trunk for LWC lines to the extent that SBC-13STATE provides such blocking capabilities to its end users and to the extent required by federal and/or State law.

3. NON-DEDICATED TRANSPORT

- 3.1 With LWC, SBC-13STATE provides non-dedicated transport, which is defined as the transmission facilities shared by more than one carrier, including the relevant SBC-13STATE entity, between end office switches, between end office switches and tandem switches, and between tandem switches, in the relevant SBC-13STATE network to the extent of the included calling scope provided for in the Agreement.

- 3.2 This non-dedicated transport permits the CARRIER to use SBC-13STATE for the origination from and termination to the associated LWCAL of local traffic to and from SBC-13STATE switches or third-party switches.
- 3.3 IntraLATA Toll Transmission
- 3.3.1 SBC-12STATE shall also make available, upon a LWCAL-specific request, the ability to route over SBC-12STATE's existing network "1+" intraLATA calls originating from that LWCAL ("L-PIC Ability"). The L-PIC Ability will be provided from the Serving Switch for the LWCAL, and consists of use of SBC-12STATE's existing intraLATA interexchange transmission facilities using the same routing tables and network facilities, including interexchange trunk groups and tandem switching (per above), as "1+" intraLATA toll calls originated from the same Serving Switch by SBC-12STATE's retail end users for whom SBC-12STATE is the presubscribed intraLATA toll carrier. The L-PIC Ability shall be made available through the use by CARRIER of SBC-12STATE's routing code or, if the means exist and are enabled by SBC-12STATE to use CARRIER's Carrier Identification Code (CIC) instead of SBC-12STATE's code, then using CARRIER's CIC.
- 3.3.2 **SBC CONNECTICUT Only:** SBC CONNECTICUT will make available, upon a LWC-AL-specific request, an L-PIC Ability for "1+" calls placed to points outside of CONNECTICUT's local calling area, but within SBC CONNECTICUT's retail intraLATA toll service area. The L-PIC Ability will be provided from SBC CONNECTICUT's Serving Switch for the LWCAL, and consists of use of SBC CONNECTICUT's existing intraLATA interexchange transmission facilities using the same routing tables and network facilities, including interexchange trunk groups and tandem switching, as "1+" intraLATA toll calls originated from the same Serving Switch by SBC CONNECTICUT's retail end users for whom SBC CONNECTICUT is the presubscribed intraLATA toll carrier.
- 3.3.2.1 CARRIER acknowledges that "1+" calls from SBC CONNECTICUT-provided LWCAL using the L-PIC Ability to Verizon switches in its incumbent service area may be originated and carried under the terms hereof, but that "1+" calls to other intrastate interLATA switches owned by other telecommunications carriers may not be originated or carried using the L-PIC Ability (e.g., Woodbury). Where appropriate in the context, references to "intraLATA" with respect to SBC CONNECTICUT shall include such use to the Verizon switches.
- 3.3.2.2 SBC CONNECTICUT's L-PIC Ability shall be made available to CARRIER through the use of a pseudo-Carrier Identification Code ("pseudo-CIC") assigned exclusively to CARRIER. The L-PIC Ability is only available to CARRIER for an LWCAL purchased by CARRIER on which CARRIER has specifically designated the pseudo-CIC as the LPIC (after the pseudo-CIC become available for use). CARRIER shall not use any other pseudo-CIC assigned to another telecommunications carrier or any other routing code enabled for use in SBC CONNECTICUT's network. SBC CONNECTICUT will provide call detail to CARRIER on a daily basis consistent with its then-current practices for LWCAL usage.
- 3.3.2.3 To be enabled to use the L-PIC Ability, CARRIER shall provide a written request to SBC CONNECTICUT. SBC CONNECTICUT shall thereafter bill CARRIER (and CARRIER shall promptly pay to SBC CONNECTICUT) a one-time \$5,000.00 service charge for assigning and establishing the CARRIER's exclusive pseudo-CIC in SBC CONNECTICUT's systems and switches. CARRIER acknowledges and agrees that this charge is non-refundable, regardless of whether and to what extent CARRIER uses the L-PIC Ability. CARRIER shall have no right in any pseudo-CIC except the right to use it in accordance with this Agreement and its permitted use of the L-PIC Ability. CARRIER shall cease use of the pseudo-CIC with the termination of this Agreement, unless otherwise provided in any successor interconnection agreement. SBC CONNECTICUT reserves the right to modify or change the pseudo-CIC code used by CARRIER hereunder, with such change effective thirty (30) days after written notice to

CARRIER of the change. CARRIER will not be charged for changing the pseudo-CIC Code.

- 3.3.2.4 The L-PIC Ability shall thereafter become available to CARRIER in an estimated six (6) weeks after SBC CONNECTICUT's receipt of payment under Section 2.3.2.3. The Parties agree that in order to implement the updating of SBC CONNECTICUT's switches with CARRIER's pseudo-CIC within the six weeks, CARRIER will obtain and provide its Exchange Carrier Code to SBC CONNECTICUT upon the execution of this Amendment.
- 3.3.2.5 For intraLATA "0+" operator service calls placed from a LWCAL using the L-PIC Ability, which calls are not customized routed, the MOU charge shall be charged for call transport. For directory assistance calls placed from a LWCAL using the L-PIC Ability, which calls are not customized routed, and where the calling party uses "directory assistance call completion" to place an intraLATA "1+" call, the MOU charge in shall be charged for call transport. Other charges for non-transport functions for such calls (e.g., OS, DA, DACC charges) shall apply as set forth in the Agreement or tariff, as applicable.
- 3.3.2.6 SBC CONNECTICUT will bill the MOUs to CARRIER on a monthly basis for total MOUs on completed calls placed from SBC CONNECTICUT LWCALs purchased by CARRIER, and on which LWCALs CARRIER has specifically ordered the pseudo-CIC be used as the LPIC. CARRIER acknowledges that SBC CONNECTICUT's charges to CARRIER will be rendered using the rating as set forth in Section 20 of SBC CONNECTICUT's Connecticut Access Tariff. After rendering a bill to CARRIER, SBC CONNECTICUT will make manual adjustments to the bill to reflect the per-MOU price set forth in this Section.
- 3.3.2.7 This Section 3.3.2 shall not apply if SBC CONNECTICUT no longer provides the L-PIC ability in the manner on which this section is based. In such event, the Parties shall negotiate in good faith replacement provisions
- 3.3.3 SBC-13STATE shall not be the intraLATA toll carrier of record (retail or reseller) for any traffic carried pursuant to the L-PIC Ability. CARRIER shall not charge SBC-13STATE for any traffic carried pursuant to the L-PIC Ability, including without limitation intercompany traffic termination charges. Any charges for terminating compensation of L-PIC Ability traffic to SBC-13STATE shall be subject to the Agreement's provisions regarding the termination of toll traffic
- 3.3.4 For purposes of intercarrier compensation where toll calls are transported via the L-PIC Ability and terminated to an SBC-13STATE switch, as between CARRIER and SBC-13STATE, terminating access charges begin to apply at the trunk side of SBC-13STATE's terminating switch.
- 3.3.5 When a LWC-AL is purchased, all CARRIER's local traffic between SBC-13STATE switches will use the non-dedicated transport, and all local CARRIER's traffic to non-SBC-13STATE switches will use an additional transiting function to those non-SBC-13STATE switches that are directly trunked (interconnected) to an SBC-13STATE switch that is within the included calling scope provided for in the Agreement. The non-dedicated transport shall not affect the routing of any traffic from a LWC-AL that has a third party carrier's Carrier Identification Code as that LWCAL's interLATA toll provider (PIC) or intraLATA toll provider (LPIC) (e.g., traffic subject to interLATA/intraLATA presubscription will be delivered to PIC'd/LPIC'd interexchange carrier).
- 3.3.5.1 In the event SBC-13STATE is ordered, required, or otherwise allowed to block CARRIER's transiting or other traffic originating from or terminating to a LWC line, CARRIER shall pay SBC-13STATE's costs of the work performed in establishing such blocking.

- 3.3.6 SBC-13STATE's ability to provide non-dedicated transport as part of LWC is limited to existing circuit switch and transmission facilities capacities, or circuit switching and transmission facilities capacities which SBC-13STATE builds for its own use, of the SBC-13STATE network.
- 3.3.7 SBC-13STATE will provide SS7 signaling as provided in the Agreement.
- 3.3.8 IntraLATA and InterLATA Toll Calls
- 3.3.8.1 All interexchange traffic will be routed to the interLATA (PIC) or intraLATA toll (LPIC) Interexchange Carrier, as appropriate, selected for an LWCAL.
- 3.3.8.2 When the L-PIC Ability is not designated for a LWC-AL and/or when SBC-13STATE is not the retail LPIC choice of CARRIER's LWC End User (the foregoing does not commit or otherwise indicate that SBC-13STATE is available as a retail intraLATA toll provider to LWC End Users), "1+" intraLATA calls originating from that LWC-AL will be routed to the LWC End User's intraLATA Primary Interexchange Carrier (LPIC) choice. When a "1+" interLATA call originates from an LWC-AL, it will be routed to the LWC End User's interLATA (PIC) choice.
- 3.3.8.3 When an intraLATA or interLATA toll call originates from a LWC-AL, SBC-13STATE will not charge originating access charges to CARRIER or the IXC except that SBC-13STATE may bill the IXC for the access transport (FGD), in accordance with its access tariff, in cases where the IXC has chosen SBC-13STATE as its transport provider.
- 3.3.8.4 When an intraLATA or interLATA toll call terminates to an LWCAL, SBC-13STATE will not charge terminating access to CARRIER or the IXC except that SBC-13STATE may bill the IXC for the access transport (FGD), in accordance with its access tariff, in cases where the IXC has chosen SBC-13STATE as its transport provider.
- 3.3.9 Toll Free Calls
- 3.3.9.1 When an LWC-AL is used to originate a call to 1+800 (or equivalent toll free dialing NPA, e.g., 888, 877 or 866), SBC-13STATE will perform the appropriate database query and route the call to the indicated IXC as provided in the Agreement.

4. MOU (USAGE-SENSITIVE) CHARGING

- 4.1 SBC-13STATE will charge CARRIER MOU rates for an LWCAL as per the usage rate noted in Appendix Pricing.

5. MAINTENANCE OF SERVICE

- 5.1 If trouble appears to occur with LWC, CARRIER will first determine whether the trouble is in CARRIER's own equipment and/or facilities or those of the LWC End User. If CARRIER determines the trouble is in SBC-13STATE's equipment and/or facilities, CARRIER will issue a trouble report to SBC-13STATE.
- 5.2 CARRIER shall pay Maintenance of Service charges/additional labor charges, as found in the SBC-13STATE Appendix Price Schedule, when CARRIER reports suspected LWC trouble and SBC-13STATE dispatches personnel to an outside location/customer premises or SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment.
- 5.3 CARRIER shall pay Maintenance of Service Charges when SBC-13STATE dispatches personnel and the trouble is in equipment or communications systems provided an entity by other than SBC-13STATE or in detariffed CPE provided by SBC-13STATE, unless covered under a separate maintenance agreement.
- 5.4 CARRIER shall pay Maintenance of Service charges when the trouble clearance did not otherwise require dispatch, but dispatch was requested for repair verification or cooperative testing, and the circuit did not exceed maintenance limits.

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- 5.5 If CARRIER issues a trouble report that requires SBC-13STATE to access the LWC End User's premises and SBC-13STATE personnel are dispatched but denied access to that premises, then Maintenance of Service charges will apply for the period of time that SBC-13STATE personnel are dispatched. Subsequently, if SBC-13STATE personnel are allowed access to that premises, these charges will apply without regard to the earlier dispatch and as if the subsequent dispatch was an unrelated dispatch.
- 5.6 Maintenance of Service charges will apply per incidence at the rate listed in the pricing schedule.
- 5.7 If CARRIER requests or approves a SBC-13STATE technician to perform services in excess of or not otherwise contemplated by the nonrecurring charges herein, CARRIER will pay Maintenance of Service charges for any additional work to perform such services, including requests for installation or conversion outside of normally scheduled working hours.

APPENDIX OSS – LOCAL WHOLESALE COMPLETE

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APPENDIX OSS (ACCESS TO OPERATIONS SUPPORT SYSTEMS FUNCTIONS FOR LOCAL WHOLESALE COMPLETE)

1. INTRODUCTION

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete between SBC-13STATE and CARRIER, and sets forth terms and conditions for use of Operations Support Systems (OSS) "functions" for pre-ordering, ordering, provisioning, maintenance/repair, and billing that SBC makes available to CARRIER in conjunction with Local Wholesale Complete (LWC).

2. DEFINITIONS

- 2.1 "SBC-SOUTHWEST" means applicable to: Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 2.2 "SBC-MIDWEST" means applicable to: Illinois, Indiana, Ohio, Michigan, and Wisconsin.
- 2.3 "SBC-WEST" means applicable to: California and Nevada.
- 2.4 "SBC-EAST" means applicable to: Connecticut.
- 2.5 "SBC-13STATE" means applicable to states pertaining to: SBC-WEST, SBC-EAST, SBC-MIDWEST, and SBC-SOUTHWEST.
- 2.6 "LSC" means the Local Service Center (LSC).
- 2.7 "LOC" means the Local Operations Center (LOC).
- 2.8 "Service Bureau Provider" - For purposes of this Agreement, Service Bureau Provider (SBP) is a company which has been engaged by a CARRIER to act on its behalf for purposes of accessing SBC-13STATE's OSS application-to-application interfaces via a dedicated connection over which multiple CARRIERS' local service transactions are transported.

3. GENERAL CONDITIONS

- 3.1 Proper Use of OSS interfaces:
- 3.1.1 For SBC-13STATE, CARRIER agrees to use SBC-13STATE OSS electronic interfaces, as offered herein, for pre-order, order, provisioning, maintenance and repair, and billing activity solely related to Local Wholesale Complete. CARRIER may not access or otherwise use the OSS functionality offering herein for any other purpose whatsoever. Failure to comply with reasonable security practices or misuse of OSS interfaces may result in forfeiture of electronic access to OSS functionality. In addition, CARRIER shall be responsible for and indemnifies SBC-13STATE against any cost, expense or liability relating to any misuse of SBC-13STATE's OSS included by not limited to unauthorized entry or access into, or use or manipulation of SBC-13STATE's OSS from systems, workstations or terminals used by CARRIER employees, agents, or any third party gaining access through information and/or facilities obtained from, or utilized by CARRIER, or on behalf of CARRIER and shall pay SBC-13STATE for any and all damages caused by such actions.
- 3.2 Within SBC-13STATE Service Areas, CARRIER's access to pre-order functions described in 4.2.2 will only be utilized to view Customer Proprietary Network Information (CPNI) of another telecommunications carrier's end user where CARRIER has obtained an authorization for release of CPNI from the end user and has obtained an authorization to become the end user's Local Service Provider. Provided however, if subsequent to March 31, 2004, SBC-13STATE is required, as a result of a final and nonappealable Section 252 arbitration award to which it is a party, or by other binding, final and nonappealable state commission decision of general applicability, or by binding Federal Communications Commission decision of general applicability, to allow access to pre order information

prior to an LOA, the Parties will negotiate an amendment to this Agreement to incorporate that decision for the affected State(s).

- 3.2.1 In SBC-13STATE regions, CARRIER must maintain records of individual customers' authorizations for change in local exchange service and release of CPNI which adhere to all requirements of state and federal law, as applicable.
- 3.2.2 Throughout SBC-13STATE region, CARRIER is solely responsible for determining whether proper authorization has been obtained and holds SBC-13STATE harmless from any loss on account of CARRIER's failure to obtain proper CPNI consent from an end user.
- 3.3 In the event SBC-13STATE has good cause to believe that CARRIER has used SBC-13STATE OSS in a way that conflicts with this Agreement (including this Appendix) or applicable law, SBC-13STATE shall give CARRIER written notice describing the misuse ("Notice of Misuse"). Upon receipt of such notice, CARRIER shall immediately refrain from the misuse. If CARRIER fails to do so, then CARRIER's access to OSS shall be discontinued until after such misuse has been remedied. Manual processing will remain available until the issue of misuse has been resolved.
- 3.4 When mechanized processes are not available, CARRIER shall be permitted to use manual processes. When using manual processes, CARRIER will use the SBC-13STATE manual forms and populate such forms via electronic input and submit the forms via facsimile to the Local Service Center (LSC). CARRIER will be billed the electronic service order charge.
- 3.5 SBC-13STATE will continue to provide notification of changes to SBC-13STATE LSOR (Local Service Ordering Requirements) document consistent with the notification intervals in the SBC-13STATE Change Management Process
- 3.6 SBC-13STATE, at its discretion, will define Local Service Request (LSR) Usage requirements according to the General Section 1.0, paragraph 1.4 of the practices in the OBF Local Service Ordering Guidelines (LSOG), which states: "Options described in this practice may not be applicable to individual providers tariffs; therefore, use of either the field or valid entries within the field is based on the providers tariffs/practices."
- 3.7 Due to enhancements and on-going development of access to SBC-13STATE's OSS functions, certain interfaces described in this Appendix may be modified, temporarily unavailable or may be phased out after execution of this Appendix. SBC-13STATE shall provide proper notice of interface phase-out consistent with the notification intervals in the SBC-13STATE Change Management process.
- 3.8 CARRIER is responsible for obtaining operating system software and hardware to access SBC-13STATE OSS functions. All hardware and software requirements are specified in: "CARRIER Hardware/Software Requirements for Access of SBC Uniform OSS Applications".

4. PRE-ORDERING

- 4.1 SBC-13STATE will provide access to pre-order functions to support CARRIER ordering of Local Wholesale Complete. The following lists represent pre-order functions that are available to CARRIER so that CARRIER order requests may be created to comply with SBC-13STATE region-specific ordering requirements.
- 4.2 **Pre-Ordering functions include**
 - 4.2.1 Feature/Service Availability
 - 4.2.1.1 Feature Inquiry provides SBC-13STATE with feature and service availability by WTN, NPA/NXX, and CLLI Code (as applicable).
 - 4.2.1.2 PIC/LPIC Inquiry provides SBC-13STATE Primary Interexchange Carrier (PIC) options for intraLATA toll and interLATA toll.

4.2.2 Customer Service Information - CSI Inquiry

Within **SBC-13STATE** Service Areas, CARRIER's access to pre-order functions described in 4.2.2 will only be utilized to view Customer Proprietary Network Information (CPNI) of another telecommunications carrier's end user where CARRIER has obtained an authorization for release of CPNI from the end user and has obtained an authorization to become the end user's Local Service Provider. Provided however, if subsequent to March 31, 2004, **SBC-13STATE** is required, as a result of a final and nonappealable Section 252 arbitration award to which it is a party, or by other binding, final and nonappealable state commission decision of general applicability, or by binding Federal Communications Commission decision of general applicability, to allow access to pre order information prior to an LOA, the Parties will negotiate an amendment to this Agreement to incorporate that decision for the affected State(s).

4.2.3 Telephone Number Inquiry

SBC-13STATE provides a Telephone Number Reservation Inquiry and a Cancel Reservation function.

4.2.4 Scheduling Inquiry/Availability

4.2.4.1 Due Date Inquiry provides next available dates for the end user (where available).

4.2.4.2 Dispatch Inquiry provides information to indicate whether dispatch is required.

4.2.5 Address Validation Inquiry

SBC-13STATE provides address validation function.

4.2.6 Common Language Location Indicator (CLLI) Inquiry

SBC-13STATE provides CLLI code inquiry function.

4.2.7 Connecting Facility Assignment (CFA) Inquiry

SBC-13STATE provides a CFA inquiry function.

4.2.8 Network Channel/Network Channel Interface (NC/NCI) Inquiry

SBC-13STATE provides a NC/NCI inquiry function.

4.3 **Electronic Access to Pre-Order Functions**

4.3.1 **Local Wholesale Complete Pre-order Interface Availability**

4.3.1.1 Enhanced Verigate is the 13-state uniform pre-order GUI interface available in **SBC-13STATE** to provide the pre-ordering functions listed in section 4.2. Enhanced Verigate is accessible via a web-based Toolbar.

4.3.1.2 An industry standard EDI/CORBA Pre-ordering Gateway is provided by **SBC-13STATE**. This pre-ordering gateway supports two structural protocols, EDI and CORBA, as recommended by the technical industry committees. EDI/CORBA is the 13-state uniform pre-order application-to-application interface that can be integrated with the CARRIER's own negotiation system.

4.4 **Other Pre-order Function Availability**

4.4.1 Where pre-ordering functions are not available electronically, CARRIER will manually request this information from the LSC, dependent on operating region, for inclusion on the service order request. CARRIER will be billed the electronic service order charge.

4.4.2 Data Validation Files are available for the purpose of providing CARRIER with an alternate method of acquiring pre-ordering information that is considered relatively static. Upon request, **SBC-13STATE** will provide CARRIER with any of the following Data Validation Files via Connect: Direct, CD-ROM, or downloadable via the pre-order GUI - Enhanced Verigate. Due to its size, the Street Address Guide (SAG) will be available only via Connect:Direct, and CD-ROM.

Data Validation Files:
SAG (Street Address Guide)
Feature/Service Availability by Switch
Directory Names
Class of Service Codes
USOC (Universal Service Order Codes)
Community Names
Yellow Page Headings
PIC/LPIC (InterLATA/IntraLATA)

5. ORDERING/PROVISIONING

- 5.1 SBC-13STATE provides access to ordering functions to support CARRIER provisioning of Local Wholesale Complete via one or more electronic interfaces. To order Local Wholesale Complete, CARRIER will format the local service request (LSR) to identify what features, services, or elements it wishes. SBC-13STATE to provision in accordance with SBC-13STATE LSOR ordering requirements. SBC-13STATE will provide CARRIER access to one or more of the following systems or interfaces:
- 5.2 Service Order Request System Availability
- 5.2.1 SBC-13STATE makes available to CARRIER an Electronic Data Interchange (EDI) application to application interface for transmission of Local Service Requests (LSR) as defined by the OBF, consistent with SBC-13STATE Local Service Order Requirements (LSOR), and via EDI mapping as defined by TCIF. In ordering and provisioning of Local Wholesale Complete, CARRIER and SBC-13STATE will utilize industry guidelines developed by OBF and TCIF EDI to transmit data based upon SBC-13STATE's Local Wholesale Complete ordering requirements, dependent on operating region.
- 5.2.2 For SBC-13STATE, web-based LEX is the new 13-state uniform ordering GUI interface that provides access to the uniform ordering functions for Local Wholesale Complete. Web-based LEX is accessible via a web-based Toolbar.
- 5.3 Provisioning for Local Wholesale Complete in SBC-13STATE
- SBC-13STATE will provision Local Wholesale Complete as detailed in CARRIER order requests. Access to status on such orders will be provided via the following electronic interfaces:
- 5.3.1 For SBC-13STATE, Order Status and Provisioning Order Status functionality is provided through the Enhanced Verigate interface which will allow CARRIER to check service order status.
- 5.3.2 For EDI ordering, SBC-13STATE will provide, and CARRIER shall use, an EDI interface for transferring and receiving orders, Firm Order Confirmation (FOC), service completion, and, as available, other provisioning data and information.

6. MAINTENANCE/REPAIR

- 6.1 Two electronic interfaces are accessible in each region to place, and check the status of, trouble reports for Local Wholesale Complete. Upon request, CARRIER may access these functions via the following methods:
- 6.1.1 In SBC-13STATE, Electronic Bonding for Trouble Administration - Graphical User Interface (EBTA-GUI) is the 13-state uniform GUI interface that allows CARRIER to perform MLT, issue trouble tickets, view status, and view trouble history on-line.
- 6.1.2 In SBC-13STATE, Electronic Bonding Trouble Administration (EBTA) is the 13-state uniform application to application interface that is available for trouble report submission and status updates. EBTA conforms to ANSI guidelines T1:227:1995, T1:228:1995 and T1:262:1998, Electronic Communications Implementation Committee (ECIC) Trouble Report Format Definition (TFRD) Number 1 as defined in ECIC document ECIC/TRA/95-003, and all guidelines

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referenced within those documents, as mutually agreed upon by CARRIER and SBC-13STATE. Functions currently implemented include Enter Trouble, Request Trouble Report Status, Add Trouble Information, Modify Trouble Report Attributes, Trouble Report Attribute Value Change Notification, and Cancel Trouble Report, as explained in 6 and 9 of ANSI T1.228:1995. CARRIER and SBC-13STATE will exchange requests over a mutually agreeable X.25-based network.

7. BILLING

- 7.1 SBC-13STATE will bill CARRIER for Local Wholesale Complete. SBC-13STATE will send associated billing information to CARRIER as necessary to allow CARRIER to perform billing functions. At minimum SBC-13STATE will provide CARRIER billing information in a paper format, or via 18-track magnetic tape, as agreed to between CARRIER and SBC-13STATE. Such alternate bill media will be made available to CARRIER consistent with the individual state tariff provisions.
- 7.2 Electronic access to billing information for Local Wholesale Complete will be available via the following interfaces:
 - 7.2.1 SBC-13STATE makes available to CARRIER a local Bill Data Tape to receive data in an electronic format from its CABS database. The local Bill Data Tape contains the same information that would appear on CARRIER's paper bill.
 - 7.2.2 In SBC-SOUTHWEST, CARRIER may also view billing information through the Bill Information interface. Bill Information will be accessible via SBC-SOUTHWEST Toolbar.
 - 7.2.3 In SBC-13STATE, CARRIER will receive a Daily Usage Extract electronically, on a daily basis, with information on the usage billed to its accounts for Local Wholesale Complete in the industry standardized Exchange Message Interface (EMI) format.
 - 7.2.4 SBC-13STATE, CARRIER will receive a uniform loss notification via EDI 836 transaction or via the uniform GUI interface, WebLEX. For LWCs this loss notification indicates when CARRIER's LWC End Users change their Local Exchange Carrier.

8. REMOTE ACCESS FACILITY

- 8.1 CARRIER must access OSS interfaces as specified by SBC-13STATE. Currently access is provided via a Remote Access Facility. For the SBC-SOUTHWEST region, the LRAF currently located in Dallas, TX will be used. The PRAF in Fairfield, CA currently handles the SBC-WEST region. The ARAF, located in Chicago, IL, presently serves SBC-MIDWEST and the SRAF in New Haven, CT, currently handles the SBC-EAST region. Each of these four xRAFs will provide CARRIERs dedicated access to the uniform application to application and Graphical User Interfaces. Connection to these remote access facilities will be established via a "port" either through dial-up or direct connection as described in Section 8.2. CARRIER may utilize a port to access SBC-13STATE OSS interfaces to perform the supported functions, in accordance herewith, in any SBC-13STATE where CARRIER has executed an Appendix OSS. OSS applications that are accessible through the Internet will also go through a secured Remote Access Facility. SBC13-STATE reserves the right to modify connectivity requirements and RAF locations. All changes will be conveyed to CARRIER in advance of implementation.
- 8.2 Presently, CARRIER may use three types of access: Switched, Private Line, and Frame Relay. For Private Line and Frame Relay "Direct Connections," CARRIER shall provide its own router, circuit, and two Channel Service Units/Data Service Units (CSU/DSU). The demarcation point shall be the router interface at the LRAF, PRAF, ARAF, or SRAF. Switched Access "Dial-up Connections" require CARRIER to provide its own modems and connection to the SBC-SOUTHWEST LRAF, SBC-WEST PRAF, SBC-MIDWEST ARAF, and SBC-EAST SRAF. CARRIER shall pay the cost of the call if Switched Access is used. Connections via the Public Internet require CARRIER to connect to an ISP of their choice and use one of the HTTPS URLs associated with access to SBC-13STATE OSS via the public internet.

- 8.3 Presently, CARRIER shall use TCP/IP to access SBC-13STATE OSS via the LRAF, ARAF, SRAF, and the PRAF. In addition, each CARRIER shall have one valid Internet Protocol (IP) network address per region. CARRIER shall maintain a user-id / password unique to each individual for accessing a SBC-13STATE OSS on CARRIER's behalf. CARRIER shall provide estimates regarding its volume of transactions, number of concurrent users, desired number of private line or dial-up (switched) connections, and length of a typical session.
- 8.4 CARRIER shall attend and participate in implementation meetings to discuss CARRIER LRAF/PRAF/ARAF/SRAF access plans in detail and schedule testing of such connections.

9. DATA CONNECTION SECURITY REQUIREMENTS

- 9.1 CARRIER agrees that interconnection of CARRIER data facilities with SBC-13STATE data facilities for access to OSS will be in compliance with SBC-13STATE's "Competitive Local Exchange Carrier (CLEC) Operations Support System Interconnection Procedures" document current at the time of initial connection to a RAF. The following additional terms in this Section 9 govern direct and dial up connections between CARRIER and the PRAF, LRAF, ARAF and SRAF for access to OSS Interfaces.
- 9.2 Joint Security Requirements
- 9.2.1 CARRIER shall notify SBC-13STATE immediately, upon termination of employment of an individual user with approved access to the SBC-13STATE's OSS interface(s) via a userID assigned by SBC-13STATE.
- 9.2.2 Both Parties shall use an industry standard virus detection software program at all times. The Parties shall immediately advise each other by telephone upon actual knowledge that a virus or other malicious code has been transmitted to the other Party.
- 9.2 Additional Responsibilities of Both Parties
- 9.2.1 Modem/DSU Maintenance And Use Policy: To the extent the access provided hereunder involves the support and maintenance of CARRIER equipment on SBC-13STATE's premises, such maintenance will be provided under the terms of the Competitive Local Exchange Carrier (CLEC) Operations Support System Interconnection Procedures document cited above.
- 9.2.2 Each Party shall notify the other Party's security organization immediately upon initial discovery of actual or suspected unauthorized access to, misuse of, or other "at risk" conditions regarding the identified data facilities or information. Each Party shall provide a specified point of contact. If either Party suspects unauthorized or inappropriate access, the Parties shall work together to isolate and resolve the problem.
- 9.3 Monitoring
- 9.3.1 To deter unauthorized access events, a warning or no trespassing message will be displayed at the point of initial entry (i.e., network entry or applications with direct entry points). Each Party should have several approved versions of this message. Users should expect to see a warning message similar to this one:
- "This is a (SBC-13STATE or CARRIER) system restricted to Company official business and subject to being monitored at any time. Anyone using this system expressly consents to such monitoring and to any evidence of unauthorized access, use, or modification being used for criminal prosecution."*
- 9.3.2 After successful authentication, each session will display the last logon date/time and the number of unsuccessful logon attempts. The user is responsible for reporting discrepancies.

10. OPERATIONAL READINESS TEST (ORT) FOR ORDERING INTERFACES

- 10.1 Prior to live access to OSS interface functionality, the Parties must conduct Operational Readiness Testing (ORT), which will allow for the testing of the systems, interfaces, and processes for the OSS

functions. ORT will be completed in conformance with agreed upon processes and implementation dates. ORT is required unless Carrier is already using CLEC OSS interface at the time of executing this LWC agreement.

11. OSS TRAINING COURSES

- 11.1 Prior to live OSS interface usage, CARRIER must complete user education classes for SBC-13STATE-provided interfaces that affect the SBC-13STATE network. A separate agreement will be required as a commitment to enroll in training classes and pay for a specific number of WSP students in each class. WSP can obtain a copy of the proposed contract and prices list from their account manager. Additional, course descriptions and class schedules by region for WSPs will be available through their Wireless Account Manager. WSP Training schedules are subject to change, with class lengths varying. Classes are train-the-trainer format to enable WSP to devise its own course work for its own employees. If Carrier is already live using SBC's CLEC OSS Interfaces at the time this contract was executed, this requirement for training language in Section 11 will only be applicable for new OSS interfaces that require separate training.

12. SERVICE BUREAU PROVIDER ARRANGEMENTS FOR SHARED ACCESS TO OSS

- 14.1 SBC-13STATE shall allow CARRIER to access its OSS via a Service Bureau Provider under the following terms and conditions:
- 14.2 Notwithstanding any language in this Agreement regarding access to OSS to the contrary, CARRIER shall be permitted to access SBC-13STATE OSS via a Service Bureau Provider as follows:
- 14.2.1 CARRIER shall be permitted to access SBC-13STATE application-to-application OSS interfaces, via a Service Bureau Provider where CARRIER has entered into an agency relationship with such Service Bureau Provider, and the Service Bureau Provider has executed an Agreement with SBC-13STATE to Allow Service Bureau Provider to establish access to and use of SBC-13STATE's OSS.
- 14.2.2 CARRIER's use of a Service Bureau Provider shall not relieve CARRIER of the obligation to abide by all terms and conditions of this Agreement. CARRIER must ensure that its agent properly performs all OSS obligations of CARRIER under this Agreement, which CARRIER delegates to Service Bureau Provider.
- 14.2.3 It shall be the obligation of CARRIER to provide notice in accordance with the notice provisions of the Terms and Conditions of this Agreement whenever it established an agency relationship with a Service Bureau Provider or terminates such a relationship. SBC-13STATE shall have a reasonable transition time to establish a connection to a Service Bureau Provider once CARRIER provides notice. Additionally, SBC-13STATE shall have a reasonable transition period to terminate any such connection after notice from CARRIER that it has terminated its agency relationship with a Service Bureau Provider.

APPENDIX LIDB AND CNAM

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APPENDIX LIDB AND CNAM SERVICE

1. INTRODUCTION

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and Carrier and sets forth the terms and conditions for Query access to, and data storage and administration in, the Line Information Data Base (LIDB) and/or Calling Name Database provided by the applicable SBC-12STATE ILECs in conjunction with LWC, per 1.2.3 below.
- 1.2 SBC MIDWEST REGION 5-STATE, SBC CONNECTICUT and SBC NEVADA do not own a LIDB. Additionally, SBC NEVADA, SBC CONNECTICUT, SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA do not own a CNAM Database. Each of these companies obtain their LIDB and/or CNAM Database services as follows:
 - 1.2.1 SBC MIDWEST REGION 5-STATE Queries and Administers its LIDB information in SNET DG's LIDB. SBC MIDWEST REGION 5-STATE Queries its CNAM information in its CNAM Database and Administers CNAM information in both its CNAM Database and SNET DG's LIDB.
 - 1.2.2 SBC CONNECTICUT Queries and Administers its LIDB and CNAM information on SNET DG's LIDB.
 - 1.2.3 SBC NEVADA Queries and Administers its LIDB and CNAM information in SBC CALIFORNIA's LIDB.
 - 1.2.4 SBC CALIFORNIA and SBC SOUTHWEST REGION 5-STATE Query and Administer their LIDB and CNAM information in their respective LIDBs.
- 1.3 Both SBC CALIFORNIA and SNET DG also provide Query access to, and data storage and administration in, their respective LIDB and/or CNAM Database for other carriers not a party to this Agreement. Any use of the possessive in this Appendix as applied to SBC MIDWEST REGION 5-STATE, SBC CONNECTICUT and SBC NEVADA will not indicate ownership but shall indicate the relationship described in paragraph 1.2.
- 1.4 SBC-12STATE as used herein, SBC 12-STATE means SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC CALIFORNIA and SBC CONNECTICUT.
- 1.5 SNET DG - As used herein, SNET DG means SNET Diversified Group, Inc., a Connecticut corporation.

2. DEFINITIONS

- 2.1 "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.
- 2.2 "Administer or Administration" means, for the purpose of this Appendix, the ability of an Account Owner to create, modify, update, or delete its line record information in LIDB in a timely manner through interfaces agreed to between the Parties
- 2.2 "Billed Number Screening (BNS) Query" means a request to validate a request to bill a call collect to the called party or to a third number that is neither the calling nor the called party.
- 2.3 "Calling Card Query" means a request to validate the use of a calling card account.
- 2.4 "CNAM Query" means a request to obtain the name associated with an originating line. CNAM Queries may also be referred to as "Generic Name Query" and "1188" Query.
- 2.5 "Database (or Data Base)" means an integrated collection of related data as well as the platform on which the collection of data exists that contains the processing logic capable of using such data in transaction processing. In the case of LIDB and the CNAM Database, the Database is the line number and related line information as well as the Query processing logic.

- 2.6 **"GetData"** means the capability of a LIDB owner to both create custom Data Elements and to process and respond to GetData Queries.
- 2.7 **"GetData Query"** means a LIDB Query that allows a company to customize its data request from LIDB to obtain Data Elements that are not related to calling card Personal Identification Numbers.
- 2.8 **"LIDB Data Screening (or Data Screening)"** means a LIDB capability to allow, deny, or limit the information returned to a Query-originator based upon type of query and data requested.
- 2.9 **"Level 2 Data Screening"** means a security capability Administered at the direction or request of an Account Owner or Query Originator. This capability gives LIDB the ability to allow, deny, or limit the information it returns to a Query-originator on a per data element, per type of Query, per Account Owner, and per LIDB basis.
- 2.10 **"Originating Line Number Screening (OLNS)"** means a specific type of LIDB Query that requests the originating call processing, billing, and service profiles of an originating line.
- 2.11 **"Query"** means a message that represents a request to a Database for information.
- 2.12 **"Response"** means a message that, when appropriately interpreted, represents an answer to a Query.
- 2.13 **"Service Platform"** means a physical platform that launches the LIDB and/or CNAM Query. A service platform may be a telephony switch, an SCP, or any other platform capable launching the Query that is provided in conjunction with LWC.
- 2.14 **"Validation Query"** means collectively both Calling Card Query and Billed Number Screening (BNS) Query.

3. DESCRIPTION OF SERVICE

- 3.1 **SBC-13STATE** will provide carrier with Query access to **SBC-12STATE's** LIDB and/or CNAM Database from all applicable **SBC-13STATE** Service Platforms that Carrier uses in conjunction with LWC in the same manner and for the same purposes that **SBC-13STATE** provides to itself. Any other Query access of **SBC-12STATE's** LIDB will be pursuant to a separate agreement, including where applicable, effective tariffs.
- 3.2 All Account Owners, including Carrier and **SBC-13STATE**, are solely responsible for the Administration of their records in a complete, accurate, and timely manner, including additions, changes, and deletions. If Carrier is utilizing the LSR process, Carrier's responsibility for Administration of their records is limited as defined in sections 4.1.3 and 4.5 of this appendix. **SBC-12STATE** will provide interfaces or processes that will allow Carrier to Administer its data in such a manner. Carrier will select the interface(s) it will use at the Operating Company Number (OCN) level. Carrier will populate records for all working telephone numbers it provides using LWC and will Administer its data in such a manner that the accuracy of Response information and consistency of available data contained with the Database(s) are not adversely impacted. All data (irrespective of the Database in which it is stored) is administered from the LIDB Service Management System (SMS). Carrier will resolve any disputes regarding data accuracy with the appropriate Account Owner.
- 3.3 For **SBC MIDWEST REGION 5-STATE** and **SBC CONNECTICUT**, GetData and LIDB Data Screening are available only through a direct agreement between Carrier and **SNET DG**. For all other regions, GetData capabilities are available as set forth in Section 4.
- 3.4 **SBC-12STATE's** LIDB accepts the following types of Queries:
 - 3.4.1 Calling Card Query
 - 3.4.2 Billed Number Screening Query
 - 3.4.3 Originating Line Number Screening Query (OLNS)
 - 3.4.4 GetData Query
 - 3.4.5 CNAM Query

- 3.5 LIDB owners, including SBC-12STATE, comply with Account Owners' requests to restrict access to their data from specific Service Platforms (e.g., end offices and operator services platforms). When such limits or restrictions apply to an SBC-13STATE's Service Platform(s), such restrictions and/or limitations will apply to all companies, including Carrier and SBC-13STATE, which generate Queries from the restricted SBC-13STATE Service Platform(s).
- 3.6 SBC-13STATE shall have sole discretion in determining which LIDBs and/or CNAM Databases its Service Platforms will Query. In addition, SBC-12STATE will, at its sole discretion, allow or negotiate any and all access to an SBC-12STATE's Database for all query types supported by these Databases. Carrier does not gain the ability, by virtue of this Appendix, to determine what Databases SBC-13STATE will Query, or what entities can query SBC-12STATE's Databases. When SBC-12STATE provides Database Query access to any entity, such entity will also have access to Carrier's information, except that Carrier may invoke LIDB Data Screening.
- 3.7 When SBC-12STATE enhances its database for new data elements, SBC-12STATE will provide Carrier with, at least, sixty (60) days notice of new data elements and Carrier will update its line records within sixty (60) days of notice.

4. DATA STORAGE AND ADMINISTRATION PROVISIONING

- 4.1 Carrier can choose to Administer its information either through unbundled electronic interfaces or a process that uses Local Service Requests. The choice between unbundled electronic interface(s) and LSRs is mutually exclusive and cannot be combined within a single Operating Company Number (OCN). Carrier will enter all working telephone numbers into the Database(s). Carrier will also delete all non-working telephone numbers from the Database(s), including numbers for end users that change to another LEC, disconnect from Carrier, or otherwise leave Carrier's local service. Carrier will perform all such data Administration including changes and modifications in a timely manner and through the interface(s) it has chosen.

4.1.1 Service Order Entry Interface

- 4.1.1.1 This unbundled electronic interface allows Carrier to provide bulk updates from its service order process or other data source (such as back office systems) to the LIDB SMS. Such bulk updates must be formatted as set forth in relevant SBC-12STATE documentation which SBC-12STATE will provide to Carrier at no additional charge. Carrier can combine the use of the Service Order Entry Interface with the Interactive Interface.

- 4.1.1.2 SBC CALIFORNIA, SBC MIDWEST REGION 5-STATE and SBC CONNECTICUT will provide the Service Order Entry Interface within one hundred eighty (180) days upon request, unless otherwise offered earlier.

4.1.2 Interactive Interface

- 4.1.2.1 This unbundled electronic interface allows Carrier to have its own personnel access its records via an application screen that is presented on a computer monitor. This interface requires Carrier to purchase third-party terminal emulation software. SBC-12STATE will provide documentation for the use of this interface at no additional charge. Carrier can combine the use of the Interactive Interface with the Service Order Entry Interface.

- 4.1.2.2 SBC CALIFORNIA, SBC MIDWEST REGION 5-STATE and SBC CONNECTICUT will provide the Interactive Interface within one hundred twenty (120) days unless otherwise offered earlier.

4.1.3 LSR Process

- 4.1.3.1 The LSR Process allows Carrier to create and Administer its data through an SBC-13STATE service order flow. The LSR Process does not provide any of the Administrative capabilities of the unbundled electronic interfaces.

- 4.1.3.2 Carrier will provide complete information in its LSR so that Carrier's line record(s) can be populated completely, accurately, and in a timely manner. If Carrier's LSR does not contain information needed to populate a LIDB date element, default information may be populated instead. However, use of default information does not relieve Carrier of its responsibility for providing complete, accurate, and timely information. In the event Carrier relies upon default information under this paragraph, **SBC-13STATE** will not be responsible for any claim or damage resulting from the use of such default information.
- 4.2 In **SBC SOUTHWEST REGION 5-STATE**, Carrier will identify, through a registration form or ballot, how Carrier's line records will be created, transferred, and/or Administered on an ongoing basis. Carrier will provide a complete registration form or ballot prior to issuing LSRs. If CARRIER is already issuing LSRs, the requirement of this section 4.2 will only be applicable if CARRIER desires to modify how CARRIER's line records will be created, transferred, and/or Administered.
- 4.3 LIDB Editor
- 4.3.1 **SBC-12STATE** will provide Carrier with contact information of **SBC-12STATE** employees who can access the LIDB Editor when a LIDB SMS is unable to access LIDB or is otherwise inoperable for the sole purpose of updating Validation information due to fraud. Carrier will confirm all such updates through its selected interface(s).
- 4.4 Data Migration
- 4.4.1 Carrier will coordinate all requests to migrate data to or from **SBC-12STATE**'s LIDB and/or CNAM database with its new Database provider. When **SBC-12STATE** is the new Database provider, **SBC-12STATE** will coordinate with Carrier to establish all dates for the exchange of line record information as well as updates to network routing information such as the Calling Name Access Routing Guide (CNARG) and the LIDB Access Routing Guide (LARG). Carrier is responsible for all updates to the Number Portability Administration Center (NPAC) that will support its data migration.
- 4.5 Audits
- 4.5.1 **SBC-12STATE** will audit all records in the Database against the LIDB SMS on a regular basis. **SBC-12STATE** will also audit all applicable line records in the SMS against the appropriate **SBC-13STATE** billing system on a regular basis. Line records subject to an audit between the SMS and the **SBC-13STATE** billing system include all records administered through an **SBC-13STATE** service order process, including the LSR Process.
- 4.5.2 Once yearly, Carrier will request a file containing all of its line record information which Carrier will audit against its own sources and Carrier will correct any discrepancies within fifteen (15) business days of receiving the audit file. Carrier can request additional audit files and **SBC-12STATE** will work cooperatively to accommodate all reasonable Carrier requests for such files.
- 4.6 LIDB Data Screening
- 4.6.1 Carrier will use an interface designated by **SBC-12STATE** to notify **SBC-12STATE** of Carrier's Level 2 Data Screening requests. **SBC-12STATE** will accept such blocking requests from Carrier only from Carrier's authorized source, as identified through passwords or other authorization process(es) designated by **SBC-12STATE**.
- 4.6.2 If an entity with appropriate jurisdictional authority determines that **SBC-12STATE** cannot offer Level 2 Data Screening and/or determines that **SBC-12STATE** cannot comply with Carrier's request for Level 2 Data Screening, the Parties agree that **SBC-12STATE** will not abide by Carrier's requests for such Data Screening and **SBC-12STATE** will not have any liability to Carrier for not providing such Data Screening.
- 4.6.3 If Carrier, or Carrier's affiliate(s), also originate Queries to **SBC-12STATE**'s LIDB(s) and Carrier and/or Carrier's affiliate(s) has obtained a ruling from a regulatory or judicial entity having appropriate authority, that its Queries cannot be screened from the data of any or all Account Owner(s) in **SBC-12STATE**'s LIDB, Carrier may not request Level 2 Data Screening to limit or

restrict its data to any or all Query originators. If Carrier has already obtained Level 2 Data Screening prior to its or its affiliate obtaining such regulatory or judicial ban, the Parties agree that SBC-12STATE can remove any prior Level 2 Data Screening that Carrier has requested.

4.6.4 LIDB Data Screening is a capability of a LIDB and can apply only to CNAM information when such information resides in a LIDB.

4.6.5 Carrier is responsible for addressing all disputes (whether formal or informal) from any entity regarding Carrier's decision to deploy or not deploy Level 2 Data Screening. Carrier agrees that, based upon a request from a Query originator, SBC-12STATE will identify to such Query originator the presence of Level 2 Data Screening.

4.7 GetData

4.7.1 The parties will work together through the Joint Development Project to determine the terms, conditions, and pricing for the creation and Administration of custom data elements that are specific to Carrier's line records. Any needed hardware and/or software enhancements required to support the creation and maintenance of custom data elements will be addressed through the Joint Development Project.

5. FORECASTS

5.1 CARRIER will provide forecasts at least thirty (30) days in advance of any event(s) that is likely to result in significant change in CARRIER's Query usage or significant change in Carrier's data store and/or volume of Database updates.

5.2 In addition to and without qualifying any other limitation of liability provision contained in this Appendix, if CARRIER does not provide SBC-13STATE with reliable forecast information as set forth in this Section 5.1, SBC-13STATE shall not be liable for any service degradation that may occur based on the lack of such reliable forecast information, including without limitation, loss of service.

6. PRICE AND PAYMENT

6.1 When CARRIER generates Queries from an SBC-13STATE switch (e.g., end office switch, operator services switch, and directory assistance switch), SBC-13STATE will recover the costs of such Queries, including Queries to third-party databases and all data storage and administration costs, from the service or network element CARRIER purchased to launch such Queries.

7. BILLING

7.1 When SBC-13STATE or a third party queries Carrier's data in LIDB and receives a response verifying the End User's willingness to accept charges for the service being provided, Carrier will provide for billing as set forth in either Section 7.1.1 or 7.1.2 of this Appendix.

7.1.1 Carrier will bill the appropriate charges to its End Users, on behalf of SBC-13STATE or a third party.

7.1.2 Carrier will provide to SBC-13STATE all necessary billing information needed by SBC-13STATE to bill the End User directly. SBC may receive billing information from Carrier subject to execution of Carrier's Billing Name and Address Agreement or other mutually agreeable method.

8. OWNERSHIP OF INFORMATION

8.1 Companies that deposit information in SBC-12STATE's LIDB and/or CNAM Database (i.e., Account Owners) retain full and complete ownership and control over such information. CARRIER obtains no ownership interest by virtue of this Appendix or Agreement.

8.2 CARRIER will not copy, store, maintain, or create any table or database of any kind based upon information it receives in a Response from an SBC-12STATE's LIDB and/or CNAM Database, for any purpose.

- 8.3 Upon request from an Account Owner in SBC-12STATE's Database whose data CARRIER is accessing, CARRIER will identify to such Account Owner, within a reasonable period of time as specified by the Account Owner, the purposes for which CARRIER uses such Account Owner's information.

9. LIMITATION OF LIABILITY

- 9.1 In no event shall SBC-13STATE have any liability for system outage or inaccessibility, or for losses arising from the unauthorized use of the data by Query purchasers and/or their customers.
- 9.2 The Parties acknowledge that line record information is the product of routine business service order activity and/or fraud investigations. CARRIER acknowledges that SBC-13STATE can furnish line record information only as accurate and current as the information has been provided to SBC-13STATE for inclusion in its LIDB and/or CNAM Database. Therefore, SBC-13STATE, in addition to the limitations of liability set forth, is not liable for inaccuracies in line record information provided to CARRIER except for such inaccuracies caused by SBC-13STATE's willful misconduct or gross negligence.
- 9.3 LIDB AND/OR CNAM INFORMATION PROVIDED FOR USE WITH LWC SBC-13STATE HEREUNDER SHALL BE PROVIDED "AS IS". SBC-13STATE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE ACCURACY OR COMPLETENESS OF THE LIDB AND/OR CNAM INFORMATION REGARDLESS OF WHOSE LIDB AND/OR CNAM INFORMATION IS PROVIDED. IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT, SHALL NOT BE HELD LIABLE FOR ANY LIABILITY, CLAIMS, DAMAGES OR ACTIONS INCLUDING ATTORNEYS' FEES, RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OR OMISSIONS IN CONNECTION WITH CARRIER'S OR CARRIER'S END USERS' USE OF LIDB AND/OR CNAM INFORMATION IN PROVIDING LWC.
- 9.4 SBC-13STATE's LIDB and/or Calling Name Database limits the Calling Name Information length to fifteen (15) characters. Name records of residential local telephone subscribers will generally be stored in the form of last name followed by first name (separated by a comma or space) to a maximum of fifteen (15) characters. Name records of business local telephone subscribers will generally be stored in the form of the first fifteen (15) characters of the listed business name that in some cases may include abbreviations. CARRIER also acknowledges that certain local telephone service subscribers may require their name information to be restricted, altered, or rendered unavailable. In addition to any other limitations of liability set forth in this Agreement, is not liable for any liability, claims, damages or actions including attorney's fees, resulting directly or indirectly from the content of any Calling Name Information contained in SBC-13STATE's LIDB and/or Calling Name Database for such content related claims, damages, or actions resulting from SBC-13STATE's willful misconduct or gross negligence.
- 9.5 In addition to any other indemnity obligations set forth in this Agreement, Carrier further agrees to release, indemnify, defend, and hold harmless SBC-13STATE from any and all claims, demands, or suits brought by a third party against SBC-13STATE, directly or indirectly arising out of SBC-13STATE's administration of fraud monitoring or SBC-13STATE's fraud monitoring systems, including without limitation claims of invasion of privacy, defamation, slander, libel, or false prosecution. This provision shall not apply to any losses, damages, or other liability for which SBC-13STATE is found liable as a result of its gross negligence or willful misconduct.
- 9.6 In addition to any other indemnity obligations set forth in this Agreement, Carrier further agrees to release, indemnify, defend and hold harmless SBC-13STATE from any and all claims, demands, or suits brought by a third party against SBC-13STATE, directly or indirectly, arising out of Carrier's refusal to provide billing as set forth in Section 7.1.2 of this Appendix.

10. MUTUALITY

- 10.1 Whether or not CARRIER is a Database owner, CARRIER will make its LIDB and/or CNAM information available to SBC-13STATE under terms and conditions contained in this Appendix with prices to be negotiated between SBC-13STATE and the Database owner. Where CARRIER is not the Database owner, CARRIER will use its best efforts to gain such comparable terms and conditions for SBC-13STATE to Query CARRIER's LIDB and/or CNAM information on the third-party's Database. Should CARRIER store

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its LIDB and/or CNAM information in a Database other than SBC-12STATE's, CARRIER will make such information available to SBC-13STATE through an industry standard technical interface and on terms and conditions set forth by applicable tariff or by a separate agreement between SBC-13STATE and the Database provider. If SBC-13STATE is unable to reach such agreement, chooses not to enter into an agreement with such a Database provider, or chooses to discontinue using the services of such Database provider, CARRIER acknowledges that such CARRIER LIDB and/or CNAM information will be unavailable to any End User, including any CARRIER's End Users, that are served by SBC-13STATE's service platforms (e.g., Operator Service Systems, Signaling Transfer Points, and/or switches).

11. ASSIGNMENT

- 11.1 Neither Party shall assign, sublet, or transfer any interest in this Appendix without the prior written consent of the other Party, which consent shall not be unreasonably withheld; *provided, however*, that either Party may assign and transfer this Appendix to any parent, subsidiary, successor, or affiliated company without the prior consent of the other Party.

APPENDIX ALTERNATE BILLED SERVICES “ABS”

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APPENDIX ALTERNATE BILLED SERVICES TRAFFIC

This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and Sage, and sets forth terms and conditions for Alternate Billed Services provided as part of the LWC by the applicable SBC-13STATE ILEC, when Sage purchases Local Wholesale Complete Access Lines (LWCAL) from SBC-13STATE.

1. DEFINITIONS

- 1.1 **"Adjustments"** means either (1) any dollar amounts that are credited to Sage's End-User Customer as defined in Section 9, or (2) any charges or credits to Sage's account for amounts declared as Unbillable and/or Uncollectible, as defined herein.
- 1.2 **"Alternate Billed Services" (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.
- 1.3 **"Daily Usage File" (DUF)** is a process whereby a CLEC receives usage sensitive records in the industry standard format, currently Exchange Message Interface (EMI).
- 1.4 **"End User"** means a third-party residence or business that subscribes to Telecommunications Services provided at retail by Sage and provisioned with SBC-STATE LWCAL. 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.
- 1.5 The term "ILEC" in this Agreement references the SBC ILECs doing business in the regions more particularly described below:
 - 1.5.1 **SBC Communications Inc. (SBC)** means the holding company which 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.
 - 1.5.2 **SBC-13STATE** - As used herein, SBC-13STATE means the applicable SBC owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.6 **"Messages"** means the call detail information provided via the DUF (See Section 3.).
- 1.7 **"Pre-paid Service"** means a program offered by SBC-13STATE's Public Communications unit that will allow Sage's End Users to receive collect calls that originate from inmate facilities served by SBC-13STATE's Public Communications unit when Selective Blocking has been imposed. Pre-paid Service allows the End Users to receive such calls by paying a pre-determined amount into a facility-specific account from which payment for future collect calls from that facility are deducted. Prepaid calls are billed at the same rate as collect calls. When the prepaid account is exhausted, calls are prevented from completing until additional amounts are deposited in the account. Any unused portion of a prepaid account is refunded upon request.
- 1.8 **"Rejects"** means Messages that fail to pass edits in Sage's billing system, including, but not limited to, Messages that do not pass due to: (1) the age of the call; (2) missing information; (3) incomplete information, or (4) Automatic Number Identification "ANIs" that do not belong to Sage at the time the calls was made. Rejects are considered "Unbillable" as defined herein.

- 1.9 **"Selective Blocking"** means a blocking functionality which selectively blocks calls that originate from certain inmate facilities that are served by SBC-13STATE's Public Communications unit and that are billable to Sage's End-Users (that is certain inmate – originated collect calls terminating to Sage's LWCAL switch-port). Traffic originating from these inmate facilities will not complete to End-Users, unless such End-Users have set up a pre-paid account, as described herein. SBC-13STATE will identify Sage's OCNs and provide programming necessary to restrict inmate originated collect calls, which terminate to SBC-13STATE local switch ports.
- 1.10 **"Rated ABS Message"** means an ABS message originating from SBC-13STATE that is rated and listed on the DUF.
- 1.11 **"Third Party"** means any Person other than a Party.
- 1.12 **"Toll Billing Exception" (TBE)** means a blocking functionality which uses pre-existing Line Information Database ("LIDB") to block CLEC's retail lines. CLEC orders TBE blocking via the service order process or an equivalent.
- 1.13 **"Unbillable"** means the rated value of an ABS Message that is not billable to Sage's End-User because of missing information in the billing record or other billing error (not the result of an error by Sage) that is returned to SBC-13STATE by means of the DUF.
- 1.14 **"Uncollectible"** means the rated value of an ABS Message for which charges are billed by Sage to Sage's End-User's telephone number and cannot be collected by Sage from its End-User, despite Sage's collection efforts.

2. RESPONSIBILITY FOR INCOLLECT CALLS

- 2.1 Sage is responsible for payment of all charges for ABS calls, excluding Unbillables, Rejects, and Uncollectibles as provided in Sections 2.1.1 and 4 below. At the sole discretion of Sage, it may bill its End Users for ABS calls transmitted by SBC-13STATE via the Daily Usage File ("DUF"). Sage shall receive a forty percent (40%) accounts receivable discount (the "Accounts Receivable Discount") off the total amount of charges for SBC-originated ABS messages (which requires that Sage pay (a) sixty percent (60%) of the total amount of charges for SBC-originated ABS messages, and (b) sixty percent (60%) of any ABS charges passed through SBC by Third Party LECs, that are included in a DUF Transmission as provided in Section 3), excluding Unbillables, Rejects, and Uncollectibles as provided in Sections 2.1.1 and 4 below. SBC-13STATE will credit Sage a Billing and Collection Service (B&CS) fee of \$0.05 per billed message for billing its End Users according to the ABS messages transmitted via the DUF for ABS calls originated on SBC-13STATE's network.
- 2.1.1 Sage will monitor and either authorize or block its End Users' ABS calls within three (3) days of receiving records from SBC, provided cumulative records on an individual telephone number equal \$250 or more within a given billing period. SBC will accept for adjustment any amounts over \$500 in a single billing period where Sage follows this process and the amount becomes uncollectible.
- 2.2 At Sage's option exercisable by delivery of a written request to SBC-13STATE, SBC-13STATE will selectively block calls which originate from inmate facilities that are served by SBC-13STATE's Public Communications unit that are billable to Sage's End-Users. Once Sage requests Selective Blocking, SBC-13STATE will identify Sage's OCNs and provide the programming necessary to restrict inmate originated collect calls which terminate to SBC-13STATE local switch ports. Sage will not be charged for Selective Blocking for the term of this Agreement. SBC-13 STATE agrees that for each state in which Sage has already exercised the option to selectively block calls as provided herein, Sage will not have to provide SBC-13 STATE with additional notice.

2.3 Settlement with Sage

2.3.1 The amount due SBC-13STATE shall be the total of all billable charges submitted to Sage, less:

- a. All charges due Sage under the Accounts Receivable Option of this Appendix minus the credit to Sage of a Billing and Collection Service (B&CS) fee of \$0.05 per billed message for billing its End Users according to the ABS messages transmitted via the DUF for ABS calls originated on SBC-13STATE's network. The Accounts Receivable Discount, as defined above, will be credited one month in arrears to Requesting Carrier's account;
- b. Amounts declared Unbillable, Rejects, and Uncollectibles as provided in 2.1.1 above or Section 4 below;
- c. Late Payment Charges previously assessed for Unbillables and/or Rejects.

2.3.1.1 Except for as provided in 2.1.1 above, once purchased as an Account Receivable, Sage shall not adjust, deduct, debit, or otherwise attempt to recourse back to SBC-13STATE any Uncollectible ABS charges, regardless of whether the End User disputes the ABS charges accuracy, declares financial insolvency, or otherwise refuses to pay Sage invoices.

2.3.2 Upon termination of this Agreement for any reason, all sums due to SBC-13STATE hereunder, adjusted in accordance with Section 2.4.2.1, shall be due and payable within thirty (30) days after the termination date.

2.4 Billing Services

2.4.1 Sage is responsible for facilitating all End-User complaints, inquiries and disputes associated with ABS calls. SBC will work cooperatively with Sage to address the End-User concerns by providing skilled assistance to Sage, and the Sage End-User. If Sage is unable or unsure of how to sustain a call with an End-User and wants to launch further investigation on a specific call or a series of calls, they may send an email to pccdisspute@sbc.com and the Dispute Command Center will perform the research necessary in order for Sage to either adjust the call or to sustain it with their End-User. The email from a representative of Sage should provide the inquiry details which include, but are not limited to, the telephone number, date of dispute/inquiry, charges and or the nature of the inquiry. Within five (5) business days of receipt of the email message, a response will be provided to a Sage representative as to the results of the investigation. This response could be a recommendation to adjust the charges, an explanation for sustaining the call, or the request for additional information to assist SBC in completing the investigation. When all questions are answered and disposition provided, Sage will either adjust the call or sustain it with their End User. Any credit will be applied to the CLEC's Billing Account Number (BAN) on the next billing cycle, as appropriate. Investigation will be completed within thirty (30) calendar days of receipt of claim. In the event that an investigation cannot be completed within thirty (30) calendar days, notification is made to Sage via phone or Email and the status will be provided periodically until it is resolved. Once an investigation is completed, an Email is sent to Sage advising of the results of the investigation and any action taken. If Sage does not agree with SBC-13STATE's position regarding application of credit to the BAN, and such disagreement cannot be resolved by informal discussions or negotiations, it is Sage's responsibility to invoke formal dispute. At its option, Sage may facilitate a three-way call with Sage, its End-User and SBC. Sage may either a) send an email to pccdisspute@sbc.com requesting SBC's participation in a cooperative call, following the timelines outlined above; or b) Sage may leave a voicemail message at the Dispute Center Hotline at 866-566-5055 if a quicker turn-around is required. Within two (2) business days of receipt of the voicemail message, a call will be scheduled.

2.5 Applicability of Rates

- 2.5.1 If any of the rates applied by SBC 13STATE to ABS call records transmitted to Sage are found by regulatory commission or other court or agency of competent jurisdiction to be unlawful, excessive or otherwise disallowed, whether prospectively or retroactively, the parties agree to comply with such findings (subject to each Parties rights to seek appeal of such findings) and work cooperatively in good faith to adjust the amounts originally applied by SBC-13STATE and the adjusted billable amounts applied by Sage, between them and as to the End Users, consistent with the findings and positions hereof.

3. DAILY USAGE FILE

- 3.1 The Daily Usage File (DUF) will be provided to Sage in the industry standard format, currently Exchange Message Interface (EMI). The EMI format is established by the Ordering and Billing Forum (OBF), an industry body, sponsored by the Alliance for Telecommunications Solutions (ATIS), that is charged with creating voluntary guidelines for the exchange of information among Telecommunications Carriers. SBC-13STATE will provide Sage with formatted records via the DUF for SBC-13STATE's and Third Party LECs' rated messages for ABS calls in accordance with each Provider's requested rate.
- 3.2 In addition to any other records required to be transmitted in the DUF, SBC-13STATE shall transmit SBC-13STATE's and Third Party LECs' rated messages for ABS calls to Sage on the DUF. The SBC-13STATE originated messages will be rated by SBC-13STATE and provided on the DUF. Third Party LECs' messages will be transmitted to Sage as passed to SBC-13STATE from the Third Party LEC.
- 3.3 Notwithstanding the foregoing, Sage shall not be liable for any Underbilled ABS Charges. Underbilled Charges means 1) ABS records that SBC-13STATE sends to Sage via the DUF that are more than ninety (90) days of the call being made that originated on the SBC-13STATE network; and 2) ABS records that are passed through SBC-13STATE by a Third Party LEC to Sage via the DUF that are more than ninety (90) days of the call being made. SBC is unable to customize the Daily Usage File process to accommodate these terms. Therefore, rated messages that meet the requirements outlined above as Underbilled ABS Charges must be returned to SBC-13STATE by means of the DUF as an Unbillable record for an adjustment.
- 3.4 Sage shall notify SBC-13STATE's Information Systems "IS" Call Center within twenty-four (24) hours from the discovery of a problem with transmission of the DUF.

4. UNBILLABLES / REJECTS

- 4.1 SBC-13STATE shall adjust Sage's ABS charges for timely and properly returned Unbillables and Rejects as defined herein within thirty (30) days or the next bill round, whichever comes first, after receipt of such Unbillables and Rejects.
- 4.2 Sage may submit Unbillable and/or Reject claims to SBC-13STATE no later than sixty (60) days from the date the message was originally sent to Sage through the DUF.
- 4.3 Sage must return Unbillable and/or Reject claims to SBC-13STATE by means of the DUF using the appropriate EMI Guidelines. In the event that Sage is not technically prepared to utilize the DUF return process to handle these charges upon execution of the Agreement, then Sage will process Unbillable and/or Reject claims through a mutually agreed upon format, not to exceed nine (9) months in duration.
- 4.4 Upon receipt of returned Unbillable and/or Reject claims, SBC-13STATE will first attempt to correct the message and re-send it to Sage for End-User billing. If the record cannot be corrected, SBC-13STATE will process appropriate credits to Sage's account.
- 4.5 In the event that duplicate records are received by Sage, a separate adjustment procedure will be necessary. Sage may notify SBC 13-STATE of one duplicate record or a series of duplicate records by submitting an email message to pccdispute@SBC.com. The Dispute Command Center will perform the

research necessary in order for Sage to either adjust the call or to sustain it with their End-User. The email from a representative of Sage should provide the inquiry details which include, but are not limited to, the telephone number, date of dispute/inquiry, charges and or the nature of the inquiry. Within five (5) business days of receipt of the email message, a response will be provided to a Sage representative as to the results of the investigation. This response could be a recommendation to adjust the charges, an explanation for sustaining the call, or the request for additional information to assist SBC in completing the investigation. When all questions are answered and disposition provided, Sage will either adjust the call or sustain it with their End User, and the credit applied to the CLEC's Billing Account Number (BAN) on the next billing cycle, as appropriate. Investigation will be completed within thirty (30) calendar days of receipt of claim. In the event that an investigation cannot be completed within thirty (30) calendar days, notification is made to Sage via phone or Email and the status will be provided periodically until it is resolved. Once an investigation is completed, an Email is sent to Sage advising of the results of the investigation and any action taken. If Sage does not agree with SBC-13STATE's application of credit to the BAN, and such disagreement cannot be resolved by informal discussions or negotiations, it is Sage's responsibility to invoke formal dispute.

5. BLOCKING

- 5.1 Sage shall comply with all federal and state requirements to block End User access to ABS calls upon End User's request. Sage shall also block End User access to ABS calls upon SBC-13STATE's request, as set forth in the Guidelines as defined in Section 5.2 in this Agreement.
- 5.2 Sage shall agree to cooperate with SBC-13STATE to investigate, minimize, and take corrective action in cases of fraud related to ABS calls. Sage shall also block its End-User access to ABS calls upon SBC-13STATE's request in the case of fraud. The failure of either Party to comply with the fraud detection and prevention provisions will constitute a material default under this Appendix for which the Parties will have the remedies specified herein.
- 5.3 In connection with the selective blocking and TBE option, SBC-13STATE is unable to guarantee that its methodology will block 100% of the collect/third Party calls. Sage is responsible for any ABS charges that may occur due to Sage's End User's acceptance of collect/third party calls; provided, however, that if such uncollectible charges arise on a line for which Sage ordered TBE blocking but SBC-13STATE failed to provide such TBE blocking, Sage will be entitled to a credit adjustment in the amount of such charges. SBC-13STATE will work cooperatively with Sage to investigate selective blocking effectiveness, where technically feasible, as part of the dispute process described in Section 2.4.1 above.

6. RESPONSIBILITY FOR TAXES ON ABS CHARGES

- 6.1 SBC-13STATE shall not add on any sales taxes, municipal fee surcharges, or other similar taxes to the ABS charges it sends to Sage on either the Daily Usage Feed or the monthly invoice.
- 6.2 When invoicing an End User, Sage shall be responsible for collection from the End User and/or payment to the appropriate taxing agency of all sales taxes, municipal fees, or other taxes of any nature, including interest and penalties, that may apply to End User charges billed under this Agreement.

7. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

- 7.1 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 Appendix 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.

- 7.2 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.

8. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

- 8.1 This Appendix 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.

9. SUBCONTRACTING

- 9.1 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 Appendix in accordance with its terms, including any obligations either Party performs through subcontractors.
- 9.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 9.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Appendix.
- 9.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Appendix with respect to such arrangement, except as consented to in writing by the other Party.
- 9.5 Any subcontractor that gains access to CPNI or Proprietary Information covered by this Appendix 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 Appendix.

APPENDIX DUF

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APPENDIX DAILY USAGE FEED (DUF)

1. INTRODUCTION AND SCOPE

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and CARRIER, and sets forth additional terms and conditions for Daily Usage Feed (DUF) of message data provided as part of LWC by the applicable SBC-13STATE ILEC.

2. DAILY USAGE FEED (DUF)

- 2.1 If and where feasible, SBC-13STATE will provide CARRIER a specific Daily Usage File ("DUF") containing message data recorded by SBC-13STATE from all usage, including originating and terminating local, intraLATA, Toll and Access of Basic Analog Switching and non-dedicated transport on LWCALs, and alternately billed calls being billed to CARRIER's LWC Numbers. Such recorded message 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-13STATE ILEC. Procedures and processes for implementing the interfaces with SBC-13STATE will be included in implementation requirements documentation.
- 2.2 To the extent not performed prior to this Agreement, to establish file transmission for the Daily Usage File, CARRIER 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.
- 2.3 Unless otherwise specified herein with respect to Alternately Billed Service Calls, call detail for LEC-carried calls that are alternately billed to CARRIER's LWC Numbers will be forwarded to CARRIER as rated call detail on the DUF.
- 2.4 Interexchange call detail on LWC Numbers 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 CARRIER. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a CARRIER account. Billing for information/enhanced services and other ancillary services traffic will be passed through when SBC-13STATE records the message.
- 2.5 Neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever with respect to DUFs or message data associated with LWC. A Party shall not be liable for its inability to meet the terms of this Section where such inability is caused by failure of the other Party to comply with its obligations. Each Party is obliged to use its best efforts to mitigate damages and to inform the other of issues and concerns regarding DUFs and/or message data so that analysis and investigation can occur and, if warranted, action taken to address and resolve any such issues or concerns. Included within the types of issues and/or concerns would be those that might indicate the CARRIER is not being sent the volume and/or type of records that it expects (e.g., anomalous trends, significant usage records shifts/usage changes in short period of time lack of record types, record mismatches, the possibility of "missing" records). The Parties agree to work cooperatively to resolve these issues.
- 2.6 When SBC-13STATE is notified that, due to its error or omission, incomplete message data has been provided to the CARRIER, upon written request from CARRIER, SBC-13STATE will make reasonable efforts to locate and/or recover the message data recorded no earlier than the twelve (12) previous months, and provide it to the CARRIER at no additional charge. Such requests to recover the message data must be made within thirty (30) calendar days from the date the details initially were made available to the CARRIER, or that CARRIER should have reasonably known or had reason to know of any such error or omission. If such written request is not received by SBC-13STATE within thirty (30)

calendar days, SBC-13STATE shall have no further obligation to recover the data and shall have no further liability to the CARRIER.

- 2.7 Except as provided in Section 2.8, SBC-13STATE shall have no further liability to the CARRIER beyond its obligation to make reasonable efforts to locate and/or recover the incomplete message data, for the data recorded no earlier than twelve (12) previous months.
- 2.8 If, despite timely written request or notification by the CARRIER, message detail is lost or unrecoverable as a direct result of SBC-13STATE having lost or damaged tapes or incurred system outages while performing recording and/or processing of message detail, SBC-13STATE and CARRIER will estimate the volume of lost messages and associated revenue based on reciprocal compensation and Access rates available herein for the average intrastate, interstate and/or local call. In such events, SBC-13STATE's liability to the CARRIER shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost compensation associated with the lost message detail for a period of time no greater than twelve (12) previous months. SBC-13STATE shall have no obligation or liability for unrecoverable message detail beyond the twelve (12) previous months, except as otherwise provided for or determined by the Joint Development Project.
- 2.9 SBC-13STATE will not be liable for any costs incurred by the CARRIER when the CARRIER is transmitting Return DUF files via data lines and a transmission failure results in the non-receipt of data by SBC-13STATE.
- 2.10 CARRIER also agrees to release, defend, indemnify and hold harmless SBC-13STATE from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by SBC-13STATE employees and equipment associated with provision of any message data or other usage data as part of or in conjunction with LWC. This includes, but is not limited to lawsuits and complaints arising from disclosure of any customer specific information associated with either the originating or terminating telephone numbers or calls to a LWCAL or LWC Number.

ATTACHMENT: SERVICE ASSURANCE PLAN

This Attachment: Service Assurance Plan sets forth the terms and conditions under which **SBC-13STATE** and Carrier have agreed to levels of service whereby SBC will pay service level assurance payments (service credits) to Carrier in connection with SBC's performance as measured by the performance measures included in Appendix 1 to this attachment. These service credits shall be the sole and exclusive remedy of Carrier for **SBC-13STATE's** failure to perform any and all obligations under the Local Wholesale Complete Agreement (LWC) and shall be in lieu of any other damages Carrier might otherwise seek for such breach through any claim or suit brought under any contract or tariff.

1. **SBC-13STATE** agrees to the payment of service credits to Carrier based on the performance measures listed in Appendix 1 (Service Assurance Business Rules). **SBC-13STATE** will collect, analyze, and report performance data for these measures in accordance with **SBC-13STATE's** Service Assurance Business Rules in Appendix 1.
2. No changes to service level assurance payments (service credits) or any other term or condition of this Attachment shall be made except by the mutual consent of the Parties only and shall not be effective until and memorialized in an amendment to this Agreement.
3. **SBC-13STATE** and Carrier agree to use the statistical tests set forth below to determine whether or not service credits are due.

Percent	Rate	Average
Parity Measurements		
Sample Size > 30 - Classical Z test for equality of proportions on arsine transformed data - Fisher's exact test if either the expected numerator < 5 for either Carrier or SBC-13STATE Sample Size >10 but <30 for either Carrier or SBC-13STATE - Fisher's Exact Test Sample Size < 10 for Either Carrier or SBC-13STATE - No test	Sample Size > 10 - Classical Z test for equality of proportions on arsine transformed data Sample Size < 10 for either Carrier or SBC-13STATE - No test	Sample Size > 10 - Two Sample t-test on log transformed data Sample Size < 10 for either Carrier or SBC-13STATE - No test
Benchmark Measurements		
Sample Size > 10 - Classical Z test for population proportion on arsine transformed data Sample Size < 10 - No test	Sample Size > 10 - Classical Z test for population proportion on arsine transformed data Sample Size < 10 - No test	Sample Size > 10 - One sample t-test on log transformed data Sample Size < 10 - No test

4. **SBC-13STATE** and Carrier concur that, for purposes of this Attachment, performance for the Carrier on a particular measure will be considered in compliance when the measured results in a single month (whether in the form of means, percents, or rates) for the same measurement, at equivalent disaggregation, for both **SBC-13STATE** and Carrier are used to calculate a p-value and the resulting value is no greater than the critical p-value
5. Overview of Service Assurance Plan
 - 5.1 **SBC-13STATE** agrees with the following methodology for developing the service credits.
 - 5.2 **SBC-13STATE** will provide service credits to the Carrier according to the terms set forth in this Attachment.

5.3 SBC-13STATE and Carrier agree that for performance that exceeds the statistical significance level, SBC-13STATE will be given performance credits equivalent to the over performance for Percentage Missed Installation – Due Dates and Out of Service within 48 Hours. The performance credits will be calculated as outlined in Section 11.0. These performance credits may be applied to reduce the overall service credits and may be accumulated month to month.

6. Procedural Safeguards and Exclusions

6.1 SBC-13STATE's agreement to implement Service Assurance Plan, and specifically its agreement to issue a service credit for any failure to meet the agreed to performance levels hereunder, will not be considered as an admission against interest or an admission of liability in any other proceeding of any kind relating to the same performance. SBC-13STATE and Carrier agree that Carrier may not use: (1) the existence of this plan; or (2) SBC-13STATE's issuance of any of service credits as evidence that SBC-13STATE has discriminated in the provision of any facilities or services under Sections 251 or 252, has violated any state or federal law or regulation or breached any agreement. Carrier agrees that SBC-13STATE's performance with respect to this agreement may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. SBC-13STATE's conduct underlying its performance and the performance data provided under the performance measures, however, are not made inadmissible by these terms. The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether SBC-13STATE has met or continues to meet the requirements of section 271 of the Act.

6.2 Carrier and SBC-13STATE will consult with one another and attempt in good faith to resolve any issues regarding the calculation of performance or service credits pursuant to this Attachment. In the event that Carrier requests such consultation and the issues raised by Carrier have not been resolved within 45 days after Carrier's request for consultation, Carrier may have an independent audit conducted, at Carrier's expense, of SBC-13STATE's performance or credit calculation for the affected measurement(s) under this Service Assurance Plan. In the event the audit reinforces the issue identified during the 45 days of consultation period or if any new issue is identified, SBC-13STATE shall reimburse Carrier any expense reasonably incurred by the Carrier for such audit. Carrier may not request more than one audit under this Service Assurance Plan per twelve calendar months under this section.

7. Exclusions Limited

7.1 SBC-13STATE shall not be obligated to issue service credits for noncompliance with a performance measurement for any measures not included on the Appendix 1. Further for any such Measures, SBC-13STATE shall not be obligated to issue service credits for noncompliance with a performance measurement if, but only to the extent that, such noncompliance was the result of any of the following: a Force Majeure event (including but not limited to acts of nature, acts of civil or military authority, terrorist acts, work stoppages etc.); an act or omission by a Carrier that is contrary to any of its obligations under the LWC Agreement with SBC-13STATE, including the dumping of orders or applications in unreasonably large batches, at or near the close of a business day, on a Friday evening or prior to a holiday, or unreasonably failing to timely provide forecasts to SBC-13STATE for services or facilities when such forecasts are required to reasonably provide such services or facilities or the action are contrary to the Act or State law; or non-SBC-13STATE problems associated with third-party actions or systems or equipment, which could not have been avoided by SBC-13STATE in the exercise of reasonable diligence (delaying event). If a delaying event excuses the issuance of any credits under this Service Assurance Plan, SBC-13STATE shall provide advance Notice of the impact that such delaying event has on credits. Any dispute regarding whether a SBC-13STATE performance failure is excused under this paragraph will be resolved between the Parties through the dispute resolution provisions of the LWC Agreement. If a delaying event only suspends SBC-13STATE's ability to timely perform an activity subject to performance measurement, the applicable time frame in which SBC-13STATE's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

7.2 The force majeure provisions of the general terms and conditions of the LWC Agreement are incorporated herein by reference.

7.3 The service credit payments to individual Carriers shall be capped such that **SBC-13STATE's** credits to Carrier in a given month shall not exceed 50% of Carrier's billed revenues for the Local Wholesale Complete product for that same month.

8. Service Credits

8.1 The number of measures that may be classified as "non-compliant" before a service credit is applicable is limited to the F values shown below. The applicable p-value is determined based upon the total number of measures with a sample size of 10 or greater that are required to be reported to a Carrier where a sufficient number of observations exist in the month to permit parity conclusions regarding a compliant or non-compliant condition. For any performance measurement, each disaggregated category for which there is a minimum of 10 data points constitutes one "measure" for purposes of calculating the p-value.

8.2 Service credits in the amount specified in the table below apply to all "non-compliant" measures in excess of the applicable "F" number of exempt measures. Service Credits apply on a per occurrence basis with a CAP, using the amount per occurrence taken from the table below. The amount of service credits in a single month shall not exceed the amount listed in the table below for the "Per measurement" category. Service credits apply only to the following measurements: Percent Missed Installation Due Dates, Installation Quality, Repeat Trouble Report Rate and Out of Service Within 48 Hours. OSS Interface Availability and Mechanized Order Completion Notifier Timeliness are provided for diagnostic purposes only, with no service credits applicable. The methodology for determining the order of exclusion, and the number of occurrences is addressed in Section 10.0 "Methods of calculating the service credits".

SERVICE CREDITS TABLE

Per Occurrence					
Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
\$50	\$75	\$100	\$125	\$150	\$200

Per Measure Cap					
Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000

8.3 The following table will be used to determine the critical probabilities that define the Performance Criterion as well as the number of non-compliant measures that may be excused in a given month. The table is read as follows: (1) determine the number of measures to which service credits are applicable and which have sample sizes greater than or equal to 10 cases. Let this number be M. (2) Find the value of M in the columns of the table with the heading "M". (3) To the immediate right of the value of M, find the value in the column labeled "F". This is the maximum number of measures that may be failed when there are M measures being evaluated. (4) To the immediate right of F in the column labeled "P" is the critical probability for determining compliance in each statistical test performed on the M measures. Statistical tests that yield probabilities less than this value indicate failures for the sub-measure. For tests without an explicit p-value formula the probability of a particular value of the test statistic is to be found in appropriate tables, e.g. Student's T distribution or Standard Normal Z distribution tables.

M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
1	0	0.010	71	8	0.051	141	14	0.054	211	19	0.054	281	23	0.051	351	28	0.052
2	1	0.100	72	8	0.050	142	14	0.054	212	19	0.053	282	23	0.051	352	28	0.052
3	1	0.059	73	9	0.059	143	14	0.054	213	19	0.053	283	23	0.051	353	28	0.052
4	2	0.141	74	9	0.058	144	14	0.053	214	19	0.053	284	23	0.050	354	28	0.051
5	2	0.106	75	9	0.057	145	14	0.053	215	19	0.053	285	23	0.050	355	28	0.051
6	2	0.085	76	9	0.056	146	14	0.052	216	19	0.052	286	23	0.050	356	28	0.051
7	2	0.071	77	9	0.055	147	14	0.052	217	19	0.052	287	24	0.053	357	28	0.051
8	2	0.061	78	9	0.055	148	14	0.052	218	19	0.052	288	24	0.052	358	28	0.051
9	2	0.053	79	9	0.054	149	14	0.051	219	19	0.052	289	24	0.052	359	28	0.051
10	3	0.093	80	9	0.053	150	14	0.051	220	19	0.051	290	24	0.052	360	28	0.051
11	3	0.084	81	9	0.053	151	14	0.051	221	19	0.051	291	24	0.052	361	28	0.050
12	3	0.076	82	9	0.052	152	14	0.050	222	19	0.051	292	24	0.052	362	28	0.050
13	3	0.069	83	9	0.051	153	15	0.055	223	19	0.051	293	24	0.052	363	28	0.050
14	3	0.064	84	9	0.051	154	15	0.054	224	19	0.050	294	24	0.051	364	28	0.050
15	3	0.059	85	9	0.050	155	15	0.054	225	19	0.050	295	24	0.051	365	29	0.052
16	3	0.055	86	10	0.057	156	15	0.054	226	20	0.053	296	24	0.051	366	29	0.052
17	3	0.052	87	10	0.057	157	15	0.053	227	20	0.053	297	24	0.051	367	29	0.052
18	4	0.077	88	10	0.056	158	15	0.053	228	20	0.053	298	24	0.051	368	29	0.052
19	4	0.073	89	10	0.055	159	15	0.053	229	20	0.053	299	24	0.050	369	29	0.052
20	4	0.069	90	10	0.055	160	15	0.052	230	20	0.052	300	24	0.050	370	29	0.051
21	4	0.065	91	10	0.054	161	15	0.052	231	20	0.052	301	24	0.050	371	29	0.051
22	4	0.062	92	10	0.053	162	15	0.052	232	20	0.052	302	25	0.053	372	29	0.051
23	4	0.059	93	10	0.053	163	15	0.051	233	20	0.052	303	25	0.052	373	29	0.051
24	4	0.057	94	10	0.052	164	15	0.051	234	20	0.051	304	25	0.052	374	29	0.051
25	4	0.054	95	10	0.052	165	15	0.051	235	20	0.051	305	25	0.052	375	29	0.051
26	4	0.052	96	10	0.051	166	15	0.050	236	20	0.051	306	25	0.052	376	29	0.051
27	5	0.070	97	10	0.051	167	15	0.050	237	20	0.051	307	25	0.052	377	29	0.050
28	5	0.068	98	10	0.050	168	16	0.054	238	20	0.051	308	25	0.052	378	29	0.050
29	5	0.065	99	11	0.056	169	16	0.054	239	20	0.050	309	25	0.051	379	29	0.050
30	5	0.063	100	11	0.056	170	16	0.053	240	20	0.050	310	25	0.051	380	29	0.050
31	5	0.061	101	11	0.055	171	16	0.053	241	21	0.053	311	25	0.051	381	30	0.052
32	5	0.059	102	11	0.055	172	16	0.053	242	21	0.053	312	25	0.051	382	30	0.052
33	5	0.057	103	11	0.054	173	16	0.053	243	21	0.053	313	25	0.051	383	30	0.052
34	5	0.055	104	11	0.054	174	16	0.052	244	21	0.052	314	25	0.051	384	30	0.052
35	5	0.054	105	11	0.053	175	16	0.052	245	21	0.052	315	25	0.050	385	30	0.051
36	5	0.052	106	11	0.053	176	16	0.052	246	21	0.052	316	25	0.050	386	30	0.051
37	5	0.051	107	11	0.052	177	16	0.051	247	21	0.052	317	25	0.050	387	30	0.051
38	6	0.065	108	11	0.052	178	16	0.051	248	21	0.052	318	26	0.052	388	30	0.051
39	6	0.063	109	11	0.051	179	16	0.051	249	21	0.051	319	26	0.052	389	30	0.051
40	6	0.061	110	11	0.051	180	16	0.050	250	21	0.051	320	26	0.052	390	30	0.051
41	6	0.060	111	11	0.050	181	16	0.050	251	21	0.051	321	26	0.052	391	30	0.051
42	6	0.058	112	12	0.056	182	17	0.054	252	21	0.051	322	26	0.052	392	30	0.051
43	6	0.057	113	12	0.055	183	17	0.054	253	21	0.051	323	26	0.052	393	30	0.050
44	6	0.055	114	12	0.055	184	17	0.053	254	21	0.050	324	26	0.051	394	30	0.050
45	6	0.054	115	12	0.054	185	17	0.053	255	21	0.050	325	26	0.051	395	30	0.050

46	6	0.053	116	12	0.054	186	17	0.053	256	22	0.053	326	26	0.051	396	31	0.052
47	6	0.052	117	12	0.054	187	17	0.052	257	22	0.053	327	26	0.051	397	31	0.052
48	6	0.051	118	12	0.053	188	17	0.052	258	22	0.053	328	26	0.051	398	31	0.052
49	7	0.062	119	12	0.053	189	17	0.052	259	22	0.052	329	26	0.051	399	31	0.052
50	7	0.061	120	12	0.052	190	17	0.052	260	22	0.052	330	26	0.050	400	31	0.052
51	7	0.059	121	12	0.052	191	17	0.051	261	22	0.052	331	26	0.050	401	31	0.051
52	7	0.058	122	12	0.051	192	17	0.051	262	22	0.052	332	26	0.050	402	31	0.051
53	7	0.057	123	12	0.051	193	17	0.051	263	22	0.052	333	27	0.052	403	31	0.051
54	7	0.056	124	12	0.050	194	17	0.051	264	22	0.051	334	27	0.052	404	31	0.051
55	7	0.055	125	13	0.056	195	17	0.050	265	22	0.051	335	27	0.052	405	31	0.051
56	7	0.054	126	13	0.055	196	17	0.050	266	22	0.051	336	27	0.052	406	31	0.051
57	7	0.053	127	13	0.055	197	18	0.054	267	22	0.051	337	27	0.052	407	31	0.051
58	7	0.052	128	13	0.054	198	18	0.053	268	22	0.051	338	27	0.052	408	31	0.050
59	7	0.051	129	13	0.054	199	18	0.053	269	22	0.050	339	27	0.051	409	31	0.050
60	7	0.050	130	13	0.053	200	18	0.053	270	22	0.050	340	27	0.051	410	31	0.050
61	8	0.060	131	13	0.053	201	18	0.052	271	23	0.053	341	27	0.051	411	31	0.050
62	8	0.059	132	13	0.053	202	18	0.052	272	23	0.053	342	27	0.051	412	32	0.052
63	8	0.058	133	13	0.052	203	18	0.052	273	23	0.052	343	27	0.051	413	32	0.052
64	8	0.057	134	13	0.052	204	18	0.052	274	23	0.052	344	27	0.051	414	32	0.052
65	8	0.056	135	13	0.051	205	18	0.051	275	23	0.052	345	27	0.051	415	32	0.052
66	8	0.055	136	13	0.051	206	18	0.051	276	23	0.052	346	27	0.050	416	32	0.051
67	8	0.054	137	13	0.051	207	18	0.051	277	23	0.052	347	27	0.050	417	32	0.051
68	8	0.053	138	13	0.050	208	18	0.051	278	23	0.052	348	27	0.050	418	32	0.051
69	8	0.053	139	14	0.055	209	18	0.050	279	23	0.051	349	28	0.052	419	32	0.051
70	8	0.052	140	14	0.055	210	18	0.050	280	23	0.051	350	28	0.052	420	32	0.051

9. General

9.1 **SBC-13STATE** will make Service Assurance Reports available on a monthly basis. When **SBC-13-STATE** performance creates an obligation to provide service credits to Carrier under the terms set forth herein, **SBC-13STATE** shall issue such credits in the required amount on or before the 30th day following the due date of the service assurance report for the month in which the obligation arose (e.g., if **SBC-13STATE** performance through March is such that **SBC-13STATE** owes service credits to Carrier for March performance, then those credits will be due May 31, 30 days after the April 30 due date for reporting March data).

10. Methods of Calculating the Service Credit

The following methods apply in calculating per occurrence for service credit:

10.1 Application of F Value Exclusions

Determine the number of measures with a sample size greater than 10 that are "non-compliant" for the individual Carrier for the month, applying the parity test and benchmark provisions provided for above. Sort all measures having non-compliant classification with a sample size greater than 10 in ascending order based on the number of data points or transactions used to develop the performance measurement result (e.g., service orders, collocation requests, installations, trouble reports). In applying the exclusions in the F-Table, the following qualifications apply to the general rule for excluding measures by progression from measures with lower transaction volumes to higher. A measure for which service credits are calculated on a per measure basis will not be excluded in applying the F Value unless the amount of service credits due for that measure is less than the amount of service credits due for each remaining measure.

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10.1.1 Measures for Which the Reporting Dimensions are Averages or Means

Step 1: Calculate the average or the mean for the measure for the Carrier that would yield the Critical p-value. Use the same denominator as the one used in calculating the test statistic for the measure.

Step 2: Calculate the percentage difference the between the actual average and the calculated average. The calculation is as follows:

$$\%diff = (\text{Carrier-result} - \text{Calculated -Value})/\text{Calculated Value.}$$

Assuming high values indicate poor performance. The percent difference will be capped at a maximum of 100%.

Step 3: Multiply the total number of data points by the percentage calculated in the previous step and the per occurrence dollar amount taken from the Service Credits Table to determine the applicable service credit amount for the given month for that measure.

10.1.2 Measures for Which the Reporting Dimensions are Percentages

Step 1: Calculate the percentage for the measure for the Carrier that would yield the Critical p-value. Use the same denominator as the one used in calculating the test statistic for the measure.

Step 2: Calculate the difference between the actual percentage for the Carrier and the calculated percentage.

Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and the per occurrence dollar amount taken from the Service Credits Table to determine the applicable service credits for the given month for that measure.

10.1.3 Measures for Which the Reporting Dimensions are Ratios or Proportions

Step 1: Calculate the rate for the measure for the Carrier that would yield the Critical p-value. Use the same denominator as the one used in calculating the test statistic for the measure.

Step 2: Calculate the absolute difference between the actual rate for the Carrier and the calculated rate.

Step 3: Multiply the total number of data points by the difference calculated in the previous step and the per occurrence dollar amount taken from the Service Credits Table to determine the applicable service credits for the given month for that measure.

11. Methods of Calculating Performance Credits

11.1 Measures for Which the Reporting Dimensions are Averages or Means

Step 1: Calculate the average or the mean for the measure for the Carrier that would yield the Critical p-value. Use the same denominator as the one used in calculating the test statistic for the measure.

Step 2: Calculate the percentage difference the between the actual average and the calculated average. The calculation is as follows:

$$\%diff = (\text{Calculated Value} - \text{Carrier result})/\text{Calculated Value.}$$

Assuming low values indicate good performance. The percent difference will be capped at a maximum of 100%.

Step 3: Multiply the total number of data points by the percentage calculated in the previous step and the per occurrence dollar amount taken from the Service Credits Table to determine the applicable performance credits for the given month for that measure.

11.2 Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the measure for the Carrier that would yield the Critical p-value. Use the same denominator as the one used in calculating the test statistic for the measure.
- Step 2: Calculate the difference between the actual percentage for the Carrier and the calculated percentage.
- Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and the per occurrence dollar amount taken from the Service Credits Table to determine the applicable performance credits for the given month for that measure.

12. Attached hereto, and incorporated herein by reference, are the following Appendix:

Appendix 1: Service Assurance Business Rules

**APPENDIX 1 – SERVICE ASSURANCE
BUSINESS RULES
TO
ATTACHMENT SERVICE ASSURANCE PLAN**

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SERVICE ASSURANCE

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5. REPEAT TROUBLE REPORT RATE	7
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Metric Number:	Name:
1	OSS Interface Availability
Definition:	
This measures the time during which SBC electronic OSS Interfaces for CLECs are actually available, as a percentage of scheduled availability. Because SBC and CLEC service representatives obtain information from the same underlying legacy OSS, if a particular OSS is down, it is equally unavailable to both SBC and CLEC employees.	
Exclusions:	
▪ Interface outages outside of prime time hours (as published or defined on a state-by-state basis) ▪ Interface outages reported by a CLEC, but not found to be in SBC's systems ▪ Undetected Interface outages reported by a CLEC that were not reported to SBC's designated trouble reporting center ▪ Scheduled interface outages for major system releases or system maintenance where CLECs were provided with advanced notification of the downtime in compliance with SBC's change management process	
Business Rules:	
The total "number of hours functionality to be available" is the cumulative number of hours (by date and time on a 24 hour clock) over which SBC plans to offer and support CLEC access to SBC's operational support systems (OSS) functionality during the reporting period. "Hours Functionality is Available" is the actual number of hours, during scheduled available time, that the SBC interface is capable of accepting or receiving CLEC transactions or data files. The actual time available is divided by the scheduled time available and then multiplied by 100 to produce the "Percent system availability" measure. SBC will not schedule normal maintenance during OSS Hours of availability as posted on the CLEC web site unless otherwise notified via an accessible letter. SBC will not schedule normal maintenance during business hours (8:00 a.m. to 5:30 p.m. Monday through Friday). When interfaces experience partial unavailability, an availability factor is applied to the calculation of downtime. This factor is stated as a percentage and represents the impact to the CLEC. Determination of the availability factor is governed by SBC's Availability Team on a case by case basis. Disputes related to application of the availability factor may be presented to the Commission. Whenever an interface experiences complete unavailability, the full duration of the unavailability will be counted, to the nearest minute, and no availability factor will be applied. SBC shall calculate the availability time rounded to the nearest minute.	
Levels of Disaggregation:	
• Verigate • LEX • EDI ordering • EDI pre-ordering • EBTA • EBTA GUI • CORBA	
Calculation:	Report Structure/Geography:
$\frac{[(\text{Hours functionality is available during the scheduled available hours}) \div \text{Scheduled system available hours}] * 100}{}$	By interface geography. If an interface serves more than one state, the same performance will be reported for all states served by this interface.
Benchmark/Parity Performance Standard:	
Interface available 95% of scheduled hour for the reporting month - Diagnostic – No Penalty to be Paid	

Metric Number:	Name:		
2	Mechanized Order Completion Notification Timeliness		
Definition:			
The percent of Mechanized Order Completion Notifications available within five business days of work completion.			
Exclusions:			
• Test and Administrative Orders • Canceled service orders • Orders received manually, e.g. fax or e-mail • SBC Affiliate (or separate division) Orders • Weekends and published holidays			
Business Rules:			
Days are calculated by subtracting the date the SOC was available to the CLEC via EDI/LEX minus the order completion date. Business Days is determined based on Local Service Center (LSC) published business hours. If the CLEC accesses SBC systems using a Service Bureau Provider, the measurement of SBC's performance does not include Service Bureau Provider processing, availability or response time.			
Levels of Disaggregation:			
• None			
Calculation:		Report Structure/Geography:	
$\left(\frac{\text{\# mechanized completions notifications returned to the CLEC within 5 business days of work completion} + \text{total mechanized completions notifications sent}}{\text{total mechanized completions notifications sent}} \right) * 100$		By CLEC	
Benchmark/Parity Performance Standard:			
95% of mechanized service order completion notifications sent within 5 business days of work completion. Diagnostic – No penalty to be paid			

Metric Number:	Name:
3	Percent SBC Caused Missed Due Dates
Definition:	
This measures the percentage of orders/circuits completed after the committed due date. Includes only orders/circuits with inward activity that have an assigned due date.	
Exclusions:	
• Canceled service orders • Test Orders • Orders that are not N, T, C. • Administrative Orders • Orders missed for facility reasons • Due dates missed solely due to CLEC or customer reasons will be excluded from the numerator. • NPAC caused misses, unless caused by SBC • Excludes Interconnection Trunks	
Business Rules:	
The due date is the date negotiated by the customer and the SBC representative for service activation. For CLEC orders, this is the due date reflected on the FOC. The Completion Date is the day that SBC personnel complete the service order provisioning activity. Wholesale Complete is measured at the order level.	
Levels of Disaggregation:	
See Benchmarks.	
Calculation:	Report Structure/Geography:
(Number of orders/circuits where the order completion date is greater than the FOC due date due to SBC reasons) ÷ (Total number of orders/circuits)	By state
Benchmark/Parity Performance Standard:	
Wholesale Complete POTS – No more than 5% missed due dates	

Metric Number:	Name:
4	Installation Quality
Definition:	
This measures the percentage of lines/circuits installed where a reported trouble was found in the network within 10 calendar days	
Exclusions:	
▪ Exclude pre-existing trouble ▪ SBC Test and Administrative Orders ▪ Subsequent reports (additional customer calls while the trouble is pending) ▪ Troubles beyond SBC's control (e.g., CPE troubles, troubles closed due to customer action, inside wire troubles, Interexchange Carrier/Competitive Access Provider, Informational, etc.) ▪ Troubles reported on the Order Completion Date, or trouble reported prior to service order completion in SBC Southwest systems (except as noted in the Business Rules section). ▪ Troubles reported but not found (Found OK, Test OK, Came Clear) ▪ Troubles reported by SBC employees in the course of performing preventative maintenance, where no customer has reported a trouble ▪ Excludes disposition code "13" reports (excludable reports), with the exception of code 1316, unless the trouble report is taken prior to completion of the service order. (Refer to Appendix 2 for list of Excluded "13" disposition codes). In SBC Midwest excludes disposition code "11", "12" and "13" reports.	
Business Rules:	
Wholesale Complete Includes reports received the day after SBC personnel complete the service order through 10 calendar days after completion. The denominator for this measure is the total count of orders posted within the reporting month. (However, the denominator will at a minimum equal the numerator). The numerator is the number of trouble reports received during the reporting month within 10 days of service order completion. These will be reported the month that they are closed. This will include troubles taken on the day of completion found to be as a result of a Wholesale Complete conversion.	
Levels of Disaggregation:	
See Benchmarks	
Calculation:	Report Structure/Geography:
Number of trouble reports submitted within 10 days of installation activity with trouble found in the network ÷ orders/circuits installed in the calendar month	By state
Benchmark/Parity Performance Standard:	
Wholesale Complete POTS – trouble reports within 10 days of installation not to exceed 8% of orders/circuits installed in the reporting month	

Metric Number:	Name:
5	Repeat Trouble Report Rate
Definition:	
Percentage of additional reported/cleared Network trouble that had a Network trouble cleared within the previous 10 days.	
Exclusions:	
▪ Disposition code "13" reports (excludable reports), with the exception of code 1316, unless the report is taken prior to the completion of the service order. In SBC Midwest excludes disposition code "11", "12" and "13" reports. ▪ Reports submitted by SBC employees in the course of performing preventative maintenance, where no customer has reported a trouble ▪ Troubles beyond SBC's control (e.g., CPE troubles, troubles closed due to customer action, inside wire troubles, Interexchange Carrier/Competitive Access Provider, Informational, etc.) ▪ Troubles reported on the Order Completion Date, or, trouble reported prior to service order completion in SBC systems ▪ Subsequent reports (additional customer calls while the trouble is pending) ▪ Troubles reported but not found (e.g. Found OK, Test OK, Came Clear) ▪ Troubles reported by SBC employees in the course of performing preventative maintenance, where no customer reported a trouble ▪ SBC official or administrative orders	
Business Rules:	
A repeat trouble report is defined as a trouble on the same line/circuit as a previous trouble report that occurred within the last 10 calendar days of the previous trouble. When the second report is received within 10 days, the original report is marked as an Original of a Repeat, and the second report is marked as a Repeat. If a third report is received within 10 days, the second report is marked as an Original of a Repeat as well as being a Repeat, and the third report is marked as a Repeat. In this case there would be two repeat reports. If either the original or the second report within 10 days is a measured report, then the second report counts as a Repeat report.	
Levels of Disaggregation:	
See Benchmarks	
Calculation:	Report Structure/Geography:
Number of qualifying network trouble reports ÷ total network trouble reports found within the reporting month	By state
Benchmark/Parity Performance Standard:	
Wholesale Complete POTS – No more than 10% repeat trouble reports in the reporting month	

Metric Number:	Name:
6	Out of Service within 48 Hours
Definition:	
This measures the average trouble duration interval from trouble receipt to trouble clearance.	
Exclusions:	
▪ Effecting service problems ▪ Subsequent reports (additional customer calls while the trouble is pending) ▪ Troubles beyond SBC's control (e.g., CPE troubles, troubles closed due to customer action, inside wire troubles, Interexchange Carrier/Competitive Access Provider, Informational, etc.) ▪ Troubles reported but not found (Found OK, Test OK and Came Clear) ▪ Troubles reported by SBC employees in the course of performing preventative maintenance, where no customer reported a trouble ▪ For troubles where the stop clock is used, the time period from when the stop clock is initiated until the time when the clock resumes ▪ Excludes disposition code "13" reports (excludable reports), with the exception of code 1316, unless the report is taken prior to the completion of the service order. In SBC Midwest excludes disposition code "11", "12" and "13" reports. ▪ No access and delayed maintenance	
Business Rules:	
Trouble duration intervals may be measured on a running clock or limited stop-clock basis. Running clock includes weekends and holidays. A running clock is used for Wholesale Complete POTS. For example, if customer premises access is not available on a weekend, the clock stops at 5:00 p.m. Friday, and resumes at 8:00 a.m. Monday. This applies to dispatched out tickets only. The clock starts on the date and time SBC receives a trouble report. The clock stops on the date and time that SBC personnel clear the repair activity and complete the trouble report in WFA.	
Levels of Disaggregation:	
See Benchmarks	
Calculation:	Report Structure/Geography:
$\frac{\sum[(\text{Date and time trouble report is cleared with the customer}) - (\text{date and time trouble report is received})]}{\text{total network customer trouble reports in the reporting month}}$	By state
Benchmark/Parity Performance Standard:	
Wholesale Complete POTS – 90% OOS trouble reports cleared within 48 hours	

LWC PRICING SCHEDULE¹

Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
1						
2	LWCAL Base Rate²	A, B, D	07/01/2004 thru 09/30/2004	\$ 23.00 / LWCAL		
3		A, B, D	10/01/2004 thru 12/31/2005	\$ 25.00 / LWCAL		
4		A, B, D	01/01/2006 thru 12/31/2006	\$ 26.00 / LWCAL		
5		A, B, D	01/01/2007 thru 12/31/2007	\$ 27.00 / LWCAL		
6		A, B, D	01/01/2008 thru 06/30/2008	\$ 28.00 / LWCAL		
7		A,B,D	7/01/2008 thru 7/31/2011	\$28.00/ LWCAL Subject to Footnote 1		
8	LWCAL Base Rate Discount Structure					
9	Discount A ³	Recurring	Measurement Period Churn	Per PCA		
10	Discount B ⁴	Recurring	Days Sales Outstanding (DSO) 30-days or less	(\$1.00) / LWCAL		
11						
12	Adjustment D ⁵	Recurring and/or Nonrecurring	Measurement Period Local Ratio			
13	Loop					
14	UNE 2-Wire Analog Loop ⁶			\$ 20.00		
15						
16	Usage		MOU Rate per LWCAL per Billing Cycle (Actual – Not Averaged)			
17			0 – 2600 MOUs per LWCAL	\$ 0.0000		
18			Price for MOUs Over 2600 MOUs per LWCAL ⁷	\$ 0.0007		
Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
19						

¹ Beginning on and after July 1, 2008, all prices in this LWC Pricing Schedule and/or under the PCA are subject to being set at a market price determined by SBC-13STATE subject to the provisions of Section 12.1 and 18.3, and/or the Agreement is subject to re-negotiation/termination, all per the PCA provisions.

20	Optional Services					
21			Privacy Manager®	\$ 3.50 / LWCAL		
22						
23	Business Line Hunting		New Business Line Hunting features will be billed at \$9.00 per LWCAL. The existing embedded base of hunting arrangements, as of PCA Effective Date, will be grandfathered without additional charge until June 30, 2005. Effective July 1, 2005, all hunting arrangements will be billed at the \$9.00 rate per LWCAL.	\$ 9.00 / LWCAL		
24						
25	Directory Assistance		Directory Assistance (DA) blended Rate for 1) (DA) per call; 2) National DA (NDA) per call; 3) Business Search Category (BCS) per call; 4) Reverse Directory Assistance (RDA)	\$ 0.37	None	None
26			Directory Assistance Call Completion (DACC) - per call	\$ 0.15	None	None
27			Directory Assistance Non-Pub Emergency Service	\$ 2.00	None	None

² OK Line Class Codes for former OK "Local Plus®" offering is not included within the LWCAL Base Rate.

³ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.

⁴ Refer to related terms, conditions and pricing in PCA for this rate element, including when it applies.

⁵ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.

⁶ UNE Loop pricing in this LWC Pricing Schedule is intended for reference only. Per the PCA, the Parties' ICA(s) will be amended to reflect this rate.

⁷ Application of rate element is effective 01/01/2005.

28			Directory Assistance - Branding - Initial/Subsequent Load	None	\$ 1,800.00	None
Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
29			Directory Assistance - Branding Per call	\$ 0.025	None	None
30			Directory Assistance - Rate Reference Initial Load	None	\$ 2,200.00	None
31			Directory Assistance - Rate Reference Subsequent Load	None	\$ 1,000.00	None
32						
33	Directory Listings		Non-List, Non-Pub, Foreign, enhanced, additional, alternate or other special listing types	65% of then current retail tariff rate		
34						
35	Operator Services		Operated Services - Fully Automated Call Processing (Per completed automated call)	\$ 0.15	None	None
36			Operator Services - Operator Assisted Call Processing (Per work second)	\$ 0.020	None	None
37			Operator Services - Branding Initial/Subsequent Load	None	\$ 1,800.00	None
38			Operator Services - Branding Per call	\$ 0.025	None	None
39			Operator Services - Rate Reference - Initial Load	None	\$ 2,200.00	None
40			Operator Services - Rate Reference - Subsequent Load	None	\$ 1,000.00	None
41						
42	Service Order Charges					
43		See Discount C	Electronic Service Order		\$ 15.00 / LSR	
44			Semi-manual or Manual Service Order		\$ 50.00 / LSR	

Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
45	Service Order Charge Discount Structure					
46	Discount C ⁸	Non-Recurring	Electronic "Flow Through"	Electronic Service Order reduced to \$5.00 NRC / LSR		
47						
48	Other Charges					
49			Bill Inquiry/Dispute (Charges sustained)			\$25.00 / Incident
50			Paper Bill			Applicable Access Tariff Rate per Incident
51			Duplicate Bill			Applicable Access Tariff Rate per Incident
52			False Technician Dispatch (CLEC Fault)			\$75.00 / Incident
53			Non-EFT payment or credit			\$25.00 / Incident

⁸ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.

NOVATION AGREEMENT

This Novation Agreement is entered into by and between SAGE TELECOM, INC. and SAGE Telecom of Texas, L.P. (hereinafter collectively referred to as "SAGE"), and **SBC-13STATE** (defined as referring to 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). Collectively, SAGE and **SBC-13STATE** are referred to as the "Parties"; individually as a "Party."

1. The Parties entered into and executed a "Private Commercial Agreement For Local Wholesale Complete" on April 2, 2004 ("Original Agreement"), which each Party acknowledges is valid and binding on it.
2. The Parties have agreed to change certain dates contained in the Original Agreement, as well as correct an error in its "Attachment: Service Assurance Plan."
3. To make the changes and correct the error, the Parties have agreed to substitute a new "Private Commercial Agreement for Local Wholesale Complete" to be executed concurrently with this Novation Agreement, and dated as of the date set forth below, ("Conformed Agreement") in lieu of, and to supercede and replace, the Original Agreement.
4. Each Party hereby agrees that with the execution of this Novation Agreement and the Conformed Agreement by both Parties, the Original Agreement shall be completely and finally extinguished in its entirety, and shall be void and of no further effect.
5. Each Party hereby agrees that with the execution of this Novation Agreement and the Conformed Agreement by both Parties, the Conformed Agreement shall be valid and binding upon it, in accordance with its provisions.

IN WITNESS WHEREOF, this Novation Agreement was executed in duplicate by a duly authorized representative of each of the Parties.

SAGE

by Sage Telecom, Inc., on its own behalf and as
General Partner of Sage Telecom of Texas, L.P.

SBC-13STATE

by SBC Telecommunications, Inc., the authorized
agent of each

Signature: _____



Name: Dennis M. Houlihan

Title: Chairman of the Board
President and Chief Executive Officer

Date: April 21, 2004

Signature: _____



Name: David A. Cole

Title: President - Industry Markets

Date: April 21, 2004

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AMENDMENT
to the
PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

This Amendment to the Private Commercial Agreement ("Amendment") is entered into by and between SAGE TELECOM, INC. and SAGE Telecom of Texas, L.P. (hereinafter collectively referred to as "SAGE"), and **SBC-13STATE** (as defined herein) (collectively, the "Parties").

WHEREAS, SBC-13STATE and SAGE are the parties to that certain "Private Commercial Agreement for Local Wholesale Complete" dated as of April 21, 2004 (the "LWC Agreement"); and

WHEREAS, SBC-13STATE and SAGE have agreed to amend the LWC Agreement as set forth herein.

WHEREAS, both Parties are willing to agree to this Amendment only on the basis that the entirety of this Amendment being an indivisible whole.

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

1. Changes to the LWC Agreement

1.1 Section 1.4.3 is hereby added to the LWC Agreement:

1.4.3 In the event that SAGE fails to meet the Monthly Minimum after the end of any billing period hereunder, such a failure shall be deemed a material breach of this Agreement. The Parties acknowledge that such a material breach is not subject to being disputed materially and in good faith by SAGE.

1.2 Section 5.3.5 of the LWC Agreement is hereby deleted and replaced with the following:

5.3.5 that neither SAGE nor **SBC-13STATE** will be entitled to substitutions and/or modifications to the packaged contractual and network offerings based upon agreements either Party may enter into with third parties (e.g., no "picking and choosing" of selective terms and conditions).

1.3 Section 11.8 of the LWC Agreement is hereby deleted and replaced with the following:

11.8 In the event that the Parties have not reached mutually agreeable terms and conditions for the Joint Development Project (including without limitation any particular project sought by SAGE), the Parties agree that any non-billing/non-payment dispute arising under or related to this Section 11 shall only be subject to Section 26.4, Informal Resolution of Non-Billing Disputes. By way of example and not of limitation, Section 26.5, Formal Dispute Resolution, shall not apply to any non-billing/non-payment disputes arising under or related to this Section 11. Each Party hereby waives and otherwise surrenders any right or ability, at law, equity, or otherwise, to pursue any such non-billing/non-payment dispute before any appropriate court, any federal or state regulatory agency, or any other governmental body.

1.4 The entirety of Section 12 ("Most Favorable Treatment") of the LWC Agreement is hereby deleted and replaced with the following:

12. [INTENTIONALLY LEFT BLANK]

1.5 The following is added to the end of Section 18.1 of the LWC Agreement

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- 18.1 The Effective Date of this Agreement is conditioned upon SAGE, on the last business day before the Effective Date, is already providing basic analog local telephone service to at least a number of Eligible End Users within the Service Areas that is equal to the Monthly Minimum (which Eligible End Users would be transitioned to LWC pursuant to this Agreement). Failure to meet to this condition precedent shall delay the effectiveness of this Agreement in all States and in all Service Areas for a period not to exceed 60 days, and if SAGE cannot meet that condition precedent by the end of the 60th day, then this Agreement shall automatically become null and void without any action by either Party.
- 1.6 Section 18.6 of the LWC Agreement is hereby deleted and replaced with the following:
- 18.6 [INTENTIONALLY LEFT BLANK]
- 1.7 Sections 18.7, 18.7.1, 18.7.2, and 18.7.3 of the LWC Agreement are hereby deleted and replaced with the following:
- 18.7 Section 18.7 (all references to Section 18.7 expressly includes its subsections) applies in accordance with its provisions, notwithstanding any other provision in this Agreement to the contrary.
- 18.7.1 SBC-13STATE shall have the right to terminate this Agreement in any state, in whole or in part, upon written notice to SAGE, in the event that any state government action or any federal action applicable to or within that state (including by a regulatory agency, a court, or a legislature) ("Government Action"), results in SAGE, any other telecommunications carrier, or any other person or entity, being permitted or otherwise allowed to obtain any of the provisions of this Agreement without all of the other provisions of this Agreement as they were agreed to by the Parties, including prices, price structure, and reciprocal compensation.
- 18.7.2 This Agreement shall be null and void, automatically and in its entirety in any state where Section 18.7 (in whole or in part) is held to be illegal, invalid and/or unenforceable, or otherwise not given effect in such state. If Section 18.7 (in whole or in part) is illegal, invalid and/or unenforceable, or otherwise not given effect as a result of federal action, the Agreement shall be null and void, automatically and in its entirety in all states where such federal action applies.
- 18.7.3 Any termination or invalidation of this Agreement under this Section 18.7 shall be effective as of the day before the effective date of such Governmental Action that triggered the invalidation or right to terminate, and SBC-13STATE and SAGE agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on Sage LWC End Users that exist as of the date of termination or invalidation. No new LWC End Users shall be added after the effective date of such Government Action. The Parties agree to negotiate and exercise commercially reasonable efforts to establish a successor agreement during the 180 days following the effective date of such Government Action, as well as work cooperatively to establish an orderly transition of LWC End Users to be completed by the end of such 180-day period. During such 180-day period, the rates contained within the pricing schedule of this Agreement shall continue to apply to any LWCAIs which have not been transitioned to other serving arrangements, including without limitation under a successor agreement.

Without affecting Section 3.3 of this Amendment, nothing in this Amendment affects the continued viability of Section 18.7.4 of the LWC Agreement.

- 1.8 The entirety of the LWC Pricing Schedule of the LWC Agreement is hereby deleted and replaced with the "First Amended LWC Pricing Schedule."

2. Amendment Effective Date

- 2.1 The effective date of this Amendment shall be the first Friday following the day on which the last of the Parties execute this Amendment; provided, however, as to the States of Indiana, Michigan, Texas, and Wisconsin, this Amendment shall be effective in accordance with the interconnection agreement amendment to which this Amendment is attached and filed with the State commission in such State.

3. Additional Terms and Conditions

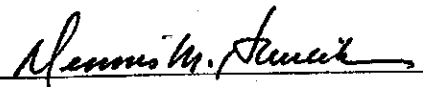
- 3.1 This Amendment contains provisions that have been negotiated as part of an entire Amendment and integrated with each other in such a manner that each provision is material to every other provision.
- 3.2 The Parties agree that each and every rate, term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other rate, term and condition in this Amendment. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on an "all or nothing" basis, and included the totality of rates, terms and conditions listed herein, and that it is an indivisible whole, intended to bind SBC-13STATE and SAGE.
- 3.3 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE LWC AGREEMENT SHALL REMAIN UNCHANGED.
- 3.4 This Amendment is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 3.5 To the extent there is a conflict or inconsistency between the provisions of this Amendment and the LWC Agreement (including all of its accompanying Appendices, Schedules and Exhibits but ignoring this Amendment), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency.
- 3.6 The headings of certain sections of this Amendment are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Amendment.
- 3.7 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.
- 3.8 Except as specifically modified by this Agreement with respect to their mutual obligations herein, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.
- 3.9 This Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment was executed in duplicate on this 6th day of January, 2005.

Sage Telecom, Inc. and Sage Telecom of Texas, L.P.

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 Wisconsin Bell Inc.
d/b/a SBC Wisconsin, Nevada Bell Telephone
Company d/b/a SBC Nevada, Pacific Bell Telephone
Company d/b/a SBC California, 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 by SBC
Telecommunications, Inc., its authorized agent

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Signature: 

Name: Dennis M. Houlihan

Signature: 

Name: Glen Sirles

Title: Chairman of the Board, President and Chief
Executive Officer

Title: *For/* President – Industry Markets and
Diversified Businesses

Date: 12/30/04

Date: 1-6-2005

FIRST AMENDED LWC PRICING SCHEDULE¹

					RECURRING RATE -- BUSINESS (Business rates are the same for business as residential unless otherwise specified in this column)		
Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE- RESIDENTIAL	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL	
1	LWCAL Base Rate ²	A, B, D	thru 12/31/2005	\$ 25.00 / LWCAL	\$27.00/LWCAL		
2		A, B, D	01/01/2006 thru 12/31/2006	\$ 26.00 / LWCAL	\$28.00/LWCAL		
3		A, B, D	01/01/2007 thru 12/31/2007	\$ 27.00 / LWCAL	\$29.00/LWCAL		
4		A, B, D	01/01/2008 thru 06/30/2008	\$ 28.00 / LWCAL	\$30.00/LWCAL		
5		A,B,D	7/01/2008 thru 6/30/2011	\$28.00/ LWCAL Subject to Footnote 1	\$30.00/LWCAL Subject to Footnote 1		
6	LWCAL Base Rate Discount Structure						
7	Discount A ³	Recurring	Measurement Period Churn	Per PCA	Per PCA		
8	Discount B ⁴	Recurring	Days Sales Outstanding (DSO) 30-days or less	(\$1.00) / LWCAL	(\$1.00)/LWCAL		
9							
10	Adjustment D ⁵	Recurring and/or Nonrecurring	Measurement Period Local Ratio				
11	Loop						
12	UNE 2-Wire Analog Loop ⁶			\$ 20.00	\$ 20.00		
13							

¹ Beginning on and after July 1, 2008, all prices in this LWC Pricing Schedule and/or under the PCA are subject to being set at a market price determined by **SBC-13STATE** subject to the provisions of Section 12.1 and 18.3, and/or the Agreement is subject to re-negotiation/termination, all per the PCA provisions.

² OK Line Class Codes for former OK "Local Plus®" offering is not included within the LWCAL Base Rate.

³ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.

⁴ Refer to related terms, conditions and pricing in PCA for this rate element, including when it applies.

⁵ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.

⁶ UNE Loop pricing in this LWC Pricing Schedule is intended for reference only. Per the PCA, the Parties' ICA(s) will be amended to reflect this rate.

Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE - Residential	RECURRING RATE - BUSINESS (Business rates are the same for business as residential unless otherwise specified in this column)	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
14	Usage		MOU Rate; average is calculated on a per LWCAL basis, and on a per end office, per billing period basis ⁷	MOU Rate average per LWCAL per end office	MOU Rate average per LWCAL per end office		
15			0 - 2600 average MOUs per LWCAL per end office, per billing period	\$ 0.0000	\$ 0.0000		
16			Price for MOUs Over 2600 average MOUs per LWCAL per end office, per billing period ⁸	\$ 0.0015	\$ 0.0015		
RECURRING RATE - BUSINESS (Business rates are the same for business as residential unless otherwise specified in this column)							
17							
18	Optional Services						
19			Privacy Manager®	\$ 3.50 / LWCAL	\$3.50/LWCAL		
20	Directory Assistance		Directory Assistance (DA)blended Rate for 1) (DA) per call; 2) National DA (NDA) per call; 3) Business Search Category (BCS) per call; 4) Reverse Directory Assistance (RDA)	\$ 0.37	\$ 0.37	None	None
21			Directory Assistance Call Completion (DACC) - per call	\$ 0.15	\$ 0.15	None	None
22			Directory Assistance Non- Pub Emergency Service	\$ 2.00	\$ 2.00	None	None

⁷ MOUs from both Residential and Business LWCALs are aggregated in making the calculation of average MOUs per LWCAL per end office per billing period, e.g., a single calculation of average MOUs per LWCAL is made, and not separate calculations the distinguish Residential LWCALs and Business LWCALs.

⁸ Application of rate element is effective 01/01/2005.

23			Directory Assistance - Branding - Initial/Subsequent Load	None	None	\$ 1,800.00	None
RECURRING RATE - BUSINESS (Business rates are the same for business as residential unless otherwise specified in this column)							
Line	Product	Potential Discounts/Adjustments	Rate Element	RECURRING RATE - Residential		NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
24			Directory Assistance - Branding Per call	\$ 0.025	\$ 0.025	None	None
25			Directory Assistance - Rate Reference Initial Load	None	None	\$ 2,200.00	None
26			Directory Assistance - Rate Reference Subsequent Load	None	None	\$ 1,000.00	None
27							
28	Directory Listings		Non-List, Non-Pub, Foreign, enhanced, additional, alternate or other special listing types	65% of then current retail tariff rate	65% of then current retail tariff rate		
29	Operator Services		Operated Services - Fully Automated Call Processing (Per completed automated call)	\$ 0.15	\$ 0.15	None	None
30			Operator Services - Operator Assisted Call Processing (Per work second)	\$ 0.020	\$ 0.020	None	None
31			Operator Services - Branding Initial/Subsequent Load	None	None	\$1,800.00	None
32			Operator Services - Branding Per call	\$ 0.025	\$ 0.025	None	None
33			Operator Services - Rate Reference - Initial Load	None	None	\$2,200.00	None

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34			Operator Services - Rate Reference - Subsequent Load	None	None	\$ 1,000.00	None
35							
36	Service Order Charges						
37		See Discount C	Electronic Service Order			\$ 15.00 / LSR	
38			Semi-manual or Manual Service Order			\$ 50.00 / LSR	

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Line	Product	Potential Discounts/ Adjustments	Rate Element	RECURRING RATE	NONRECURRING RATE FIRST	NONRECURRING RATE ADDITIONAL
39	Service Order Charge Discount Structure					
40	Discount C ⁹	Non-Recurring	Electronic "Flow Through"	Electronic Service Order reduced to \$5.00 NRC / LSR		
41	Other Charges					
42			Bill Inquiry/Dispute (Charges sustained)			\$25.00 / Incident
43			Paper Bill			Applicable Access Tariff Rate per Incident
44			Duplicate Bill			Applicable Access Tariff Rate per Incident
45			False Technician Dispatch (CLEC Fault)			\$75.00 / Incident
46			Non-EFT payment or credit			\$25.00 / Incident

⁹ Refer to related terms, conditions and pricing in PCA for this rate element, including its calculation and application.