

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI
AND
SBC ADVANCED SOLUTIONS, INC.**

This Lawful UNES Amendment (with Interim Order Exclusion) is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri¹ ("SBC Missouri") and SBC Advanced Solutions, Inc. ("CLEC").

WHEREAS, SBC Missouri and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Act"), as may have been amended prior to the date hereof (the "Agreement");

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

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

The following Sections "Lawful Provision of Access to Unbundled Network Elements ("Lawful UNES"), "Transition Procedure," and Interim Order Exclusion are hereby added to the Appendix, Agreement, Article or Section of the Agreement related generally to unbundled network elements, and shall apply, notwithstanding any language in the Agreement to the contrary, including, without limitation, any intervening law, change in law or other substantively similar provision. If the Agreement already contains terms and conditions generally related to SBC Missouri's obligation to provide access to unbundled network elements under the Act, then such terms and conditions shall be replaced by the following Sections in their entirety. Further, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNES" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," below:

1. Lawful Provision of Access to Unbundled Network Elements ("Lawful UNES")

1.1 This *Appendix* of the Agreement sets forth the terms and conditions pursuant to which SBC Missouri will provide CLEC with access to unbundled network elements (UNES) under Section 251(c)(3) of the Act in SBC Missouri's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC Missouri shall be obligated to provide UNES only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNES to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNES that SBC Missouri is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders ("Lawful UNES"), shall be referred to in this Agreement as "Lawful UNES."

1.1.1 By way of example only, if terms and conditions of this Agreement state that SBC Missouri is required to provide a Lawful UNE or Lawful UNE combination or other arrangement including a "Lawful UNE

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. Southwestern Bell Telephone, L.P. is now doing business in Missouri as SBC Missouri

Dedicated Transport,” and Dedicated Transport is not a Lawful UNE under lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, then SBC Missouri shall not be obligated to provide the item as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.

- 1.2 Nothing contained in the Agreement shall be deemed to constitute consent by SBC Missouri that any item identified in this Agreement as a UNE or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC Missouri is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 1.3 The preceding includes without limitation that SBC Missouri shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC Missouri network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 1.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement should cease to be a Lawful UNE at any time, then the Transition Procedure defined in Section 2, below, shall govern. For purposes of the Agreement “cease to be a Lawful UNE” means any situation where SBC Missouri is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act. The Parties agree that, notwithstanding the Effective Date of this Amendment, such situations include, but are not limited to (a) the issuance of the mandate in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“USTA I”); or (b) by operation of the *Triennial Review Order* released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the “Triennial Review Order” or “TRO”), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals’ decision, *United States Telecom Association v. FCC*, Case No. 00-1012 (D.C. Cir. 2004) (“USTA II”); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that SBC Missouri is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act.
 - 1.4.1 By way of example only, an element described as an unbundled network element or Lawful UNE in this Agreement can cease to be a Lawful UNE on a categorical basis, on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2 “Transition Procedure” shall apply.

2. Transition Procedure

- 2.1 SBC Missouri shall only be obligated to provide Lawful UNEs under this Agreement. Subject only to the Interim Order Exclusion set forth in Section 3, below, to the extent an element described as a Lawful UNE or an unbundled network element in this Agreement should cease to be a Lawful UNE, SBC Missouri may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement should cease to be Lawful UNEs, SBC Missouri will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC Missouri agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as no longer being Lawful UNEs in the SBC Missouri notice letter referenced in this Section 2.1. SBC Missouri reserves the right to audit the CLEC orders transmitted to SBC Missouri and to the extent that the CLEC has processed orders

and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2, including the options set forth in (a) and (b) below, and SBC Missouri's rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to CLEC with regard to the element(s) identified in the SBC Missouri notice, including the combination or other arrangement in which the element(s) were previously provided:

- (a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or
- (b) SBC Missouri and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.
 - i. In the case of UNE-P, the substitute product or service shall be Resale; and
 - ii. In the case of loops and transport, the substitute product or service shall be the analogous access product, if available.

Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if CLEC and SBC Missouri have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then SBC Missouri may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.

- 2.2 The provisions set forth in this Section 2 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2 "Transition Period" to be implemented or effective as provided above. Further, Section 2 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Sections 1 and 2, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.

3. Interim Order Exclusion

- 3.1 On August 20, 2004, the FCC released its Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004), which became effective on September 13, 2004 by publication in the Federal Register ("Interim Order"). In order for this Section 3 to apply, the Interim Order must be in effect (not stayed, vacated or otherwise invalidated), and its interim time period(s) not yet expired.

- 3.2 For purposes of this Section 3 Interim Order Exclusion, the following elements shall be referred to as the "USTA II Elements":

- 3.2.1 local circuit switching for "mass market" customers (as used in the TRO) (per vacatur of 47 C.F.R. § 51.319(d)(2),(5));
- 3.2.2 DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); and
- 3.2.3 DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), and dark fiber loops and transport (per vacatur of 47 C.F.R. § 51.319(e) and 47 C.F.R. § 51.319(a)(6)).

- 3.3 USTA II Elements. SBC Missouri shall provide the USTA II Elements in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement until the earlier of (a) the effective

date of final unbundling rules adopted by the FCC in the proceeding opened by the *Notice of Proposed Rulemaking* appended to the *Interim Order*; or (b) the date that is six months after Federal Register publication of the Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*"); or (c) if the *Interim Order* is withdrawn, vacated or stayed, or are otherwise determined to be invalid, the date it is withdrawn, vacated or stayed, or is otherwise determined to be invalid ("*Interim Order Exclusion*"). Pursuant to the *Interim Order*, the continuation of the rates, terms and conditions applicable to the USTA II Element may be superseded by (1) voluntarily negotiated agreements between SBC Missouri and CLEC, (2) an intervening FCC order affecting specific unbundling obligations (e.g., an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements.

3.3.1 To the extent the Agreement is still in effect following the occurrence of the earlier of (a), (b) or (c), above, the following shall occur:

3.3.1.1 If (a) -- The **Interim Order Exclusion** shall expire, and Section 2 "Transition Procedure" shall become fully applicable and effective as to each of the **USTA II Elements**;

3.3.1.2 If (b) -- The **Interim Order Exclusion** shall expire, and Section 2 "Transition Procedure" shall become fully applicable and effective as to the **USTA II Elements**.

3.3.1.3 If (c) -- The **Interim Order Exclusion** shall expire, and Section 2 "Transition Procedure" shall become fully applicable and effective as to the **USTA II Elements** as of January 1, 2005.

3.4 Nothing in this Section 3 shall affect the application of Sections 1 and 2, above, to elements that are *not* USTA II Elements.

4. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in Paragraph 1, above (for example, all references in the Agreement to "UNE(s)" or "unbundled network elements" shall be deemed to have been replaced or supplemented, as applicable, with the defined term "Lawful UNEs" as set forth in Section "Lawful Provision of Access to Unbundled Network Elements," above). The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
5. Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
6. Upon written request of either Party, the Parties will amend any and all Agreement pricing schedules to accurately reflect the terms and conditions of this Amendment.
7. Notwithstanding any contrary provision in the Agreement, this Amendment, or any SBC Missouri tariff, nothing contained in the Agreement, this Amendment, or any SBC Missouri tariff shall limit SBC Missouri's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the State Commission, the FCC, any court or any other governmental authority related to, concerning, or that may affect SBC Missouri's obligations under the Agreement, this Amendment, any SBC Missouri tariff, or Applicable Law.
8. Any performance measures and remedies identified in the Agreement apply solely to UNEs which SBC Missouri is obligated to offer under Section 251(c)(3) of the Act. If an unbundled network element or Lawful UNE under this Agreement ceases to be a Lawful UNE, SBC Missouri will have no obligation to report on or pay remedies for any measures associated with such element, notwithstanding any language to the contrary in the Agreement.

9. Line Sharing or the High Frequency Portion of the Loop ("HFPL"):

- a. Notwithstanding anything to the contrary herein, the HFPL provisions set forth in the underlying Agreement are hereby modified to incorporate the following provisions:

Availability of HFPL for Purposes of Line Sharing: SBC Missouri shall make available to CLEC (or its successor or assign) the HFPL for purposes of line sharing in accordance with the following provisions:

Grandfathered and New End-Users: SBC Missouri will continue to provide access to the HFPL, where: (i) prior to October 2, 2003, CLEC began providing DSL service to a particular end-user customer and has not ceased providing DSL service to that customer ("Grandfathered End-Users"); and/or (ii) CLEC begins/began providing xDSL service to a particular end-user customer on or after October 2, 2003, and on or before the close of business October 17, 2004 ("New End-Users"). Such access to the HFPL shall be provided at the monthly recurring rates in effect between the Parties for the HFPL prior to October 2, 2003 (set forth in Appendix Pricing to this Agreement), and shall continue for Grandfathered End-Users until the earlier of: (1) CLEC's xDSL-base service to the end-user customer is disconnected for whatever reason, or (2) the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the FCC's HFPL grandfather clause established in its Triennial Review Order, and as to New End-Users, the earlier of: (1) and (2) immediately above; or (3) October 2, 2006.

Beginning October 2, 2006, SBC Missouri shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-Users that CLEC began providing xDSL-based service to over the HFPL on or after October 2, 2003 and before October 17, 2004. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such new end-user customer(s) via a line splitting arrangement, over a stand-alone xDSL Loop purchased from SBC Missouri, or through an alternate arrangement, if any, that the Parties have negotiated.

- b. Any references to the HFPL being made available as an unbundled network element or "UNE" are hereby deleted from the underlying Agreement.
- c. Any rates, terms and conditions set forth in the underlying Agreement relating to the provision and/or availability of SBC Missouri-owned splitters are hereby deleted from the Agreement.
- d. To the extent that any provision set forth in this Paragraph 8 and subparagraphs and Amendment should conflict with any line sharing provisions in the underlying Agreement, this Amendment shall supersede and control.
10. If the Agreement has been previously amended or is simultaneously amended, or is later amended to contain the terms and conditions of "Post USTA II Amendment"², the terms and conditions of the "Post USTA II Amendment" shall be given full effect notwithstanding the inclusion of this Lawful UNEs Amendment, and the terms and conditions of this "Lawful UNEs Amendment" shall not diminish or otherwise affect the terms and conditions of the "Post USTA II Amendment."
11. This underlying Agreement is the result of CLEC's decision to opt into the M2A or parts thereof pursuant to Missouri Public Service Commission Order in Case No. TO-99-227 (dated March 6, 2001). This Amendment to such Agreement addresses certain specific language changes thereto as agreed by SWBT and CLEC ("Agreed Changes"). The Parties acknowledge and agree that (i) all aspects of this Agreement except for the Agreed Changes (and any other voluntarily negotiated changes contained in a separate amendment to the Agreement, if

² That is, language substantially similar to the following: Pursuant to the decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004), effective immediately, SBC State is not required, pursuant to this Agreement, to provide to CLEC, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality: switching (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1, DS3 and dark fiber dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1, DS3 and dark fiber loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(6),(7)); provided, however, that as to switching for customer locations with 1 to 3 lines (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), this provision shall become effective on and after January 1, 2005.

any "Other Agreed Changes") were made available to CLEC only as a result of CLEC's decision to opt into the M2A or parts thereof pursuant to Missouri Public Service Commission Order in Case No. TO-99-227 (dated March 6, 2001); and (ii) therefore, no aspect of this Agreement other than the Agreed Changes set forth in this Amendment or any Other Agreed Changes qualify for portability into Illinois or any other state under 220 ILCS 5/13-801(b) ("Illinois Law"), Condition 27 of the Merger Order issued by the Illinois Commerce Commission in Docket No. 98-0555 ("Condition 27") or any other state or federal statute, regulation, order or legal obligation (collectively "Law"), if any. The Parties further acknowledge and agree that the Agreed Changes and any Other Agreed Changes shall only be considered portable under the Illinois Law, Condition 27 or any other Law Paragraph if they otherwise qualify for portability under such Illinois Law, Condition 27 or other Law.

In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement or any other rights under the Agreement, including this Amendment and any other amendments to the Agreement (including intervening law or other rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof or other rights, including, without limitation, the following actions, which the Parties have not yet incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order (rel. Aug. 21, 2003), and the FCC's Biennial Review Proceeding; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) and as to the FCC's Notice of Proposed Rulemaking as to Inter-carrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001). Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment 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, 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). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory or legislative body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and/or conditions ("Provisions") in this Amendment, the affected Provision(s) will be immediately invalidated, modified or stayed as required to effectuate the subject order upon the written request of either Party ("Written Notice"). In the event of such a Written Notice, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the provisions. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

12. The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Missouri Public Service Commission and shall become effective ten (10) days following approval by such Commission.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 11th day of November, 2004, by SBC Missouri, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

SBC Advanced Solutions, Inc.

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

By: David G. Hammock

By: Kathy J. Wilkinson

Name: David G. Hammock
(Print or Type)

Name: Kathy J. Wilkinson
(Print or Type)

Title: RVP-Carrier/Supplier Management
(Print or Type)

Title: ^{For} Senior Vice President -
Industry Markets & Diversified Businesses

Date: 11-5-04

Date: 11-11-04

FACILITIES-BASED OCN # 3369

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