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March 17, 2003

Via Federal Express
(573) 751-6599

Data Center
Missouri Public Service Commission
Suite 100
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65102

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MAR 18 2003 KH

*Records
Public Service Commission*

Re: ICG Telecom Group, Inc. and Southwestern Bell Telephone Company's
Amendments to their Missouri 271 Agreement ("M2A")

Dear Sirs:

On behalf of ICG Telecom Group, Inc. ("ICG"), I am enclosing an original and 2 copies of a pleading requesting approval of Amendment-Add UNE Combining Appendix and Amendment-Add 911 Waiver to the Missouri 271 Agreement ("M2A") between ICG and Southwestern Bell Telephone Company.

I am also enclosing an additional copy to be file-stamped. Please return the file-stamped copy in the enclosed self-addressed, stamped envelope. Thank you for your prompt attention to this filing. Please contact me if you have any questions or need additional information.

Sincerely yours,


Bradford W. Bayliff

Enclosures

VT-2003-0038

RECEIVED³

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Records
Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI

APPLICATION OF ICG TELECOM)
GROUP, INC. FOR APPROVAL OF)
AMENDMENTS TO ITS M2A)
INTERCONNECTION AGREEMENT)
WITH SOUTHWESTERN BELL) CAUSE NO. _____
TELEPHONE COMPANY PURSUANT)
TO § 252(e) OF THE)
TELECOMMUNICATIONS)
ACT OF 1996)

APPLICATION FOR APPROVAL
OF AMENDMENTS TO THE M2A INTERCONNECTION AGREEMENT
BETWEEN ICG TELECOM GROUP, INC.
AND
SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW, ICG Telecom Group, Inc. ("ICG") for its application for approval of amendments to its Missouri 271 Agreement ("M2A") with Southwestern Bell Telephone Company¹ pursuant to § 252(e) of the Telecommunications Act of 1996 ("the Federal Act") and 4 CSR 240-2.060, *et seq.* alleges and states as follows:

I. Parties

1. Parties are ICG, a Colorado corporation with its principal place of business located at 161 Inverness Drive West, Englewood, Colorado 80112 and SWBT, with its principal offices in Missouri located at One Bell Center, St. Louis, Missouri 63101. ICG is a telecommunications services provider with clustered regional telecommunications networks throughout the United States.

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, subsequently converted to Southwestern Bell Telephone, L.P., a Texas limited partnership, doing business as Southwestern Bell Telephone Company ("SWBT")

II. Allegations of Fact

2. ICG presents amendments to its M2A with SWBT for approval by this Commission. The amendments were negotiated and executed pursuant to the terms of the Federal Act. All issues have been successfully negotiated and agreed upon. Therefore, no arbitration of any issue is required.

3. The parties agree to supplement and amend the M2A. The parties' agreement will be amended to include "Amendment-Add UNE Combining Appendix" and "Amendment-Add 911 Waiver" (collectively, "the Amendments").

4. Except as modified by the Amendments, all other terms and conditions of the M2A shall remain unchanged and in full force and effect.

5. Amendment-Add UNE Combining Appendix sets forth the terms and conditions that govern the combining activities involving unbundled network elements ("UNEs") to be performed by SWBT. The terms and conditions supersede any conflicting terms and conditions contained within the parties' current interconnection agreement.

6. Amendment-Add 911 Waiver amends the parties' interconnection agreement to incorporate an agreement between the parties that ICG will not have to establish 911 trunking or interconnection to SWBT's 911 Selective Routers and that SWBT is not required to provide 911 services for those information service applications in which ICG does not offer its end users the ability to place outgoing voice calls.

7. Copies of Amendment-Add UNE Combining Appendix ("Exhibit 1") and Amendment-Add 911 Waiver ("Exhibit 2") are attached for review by the Commission staff.

8. ICG seeks the Commission's approval of Amendment-Add UNE Combining Appendix and Amendment-Add 911 Waiver pursuant to the provisions of the Federal Act and Missouri laws. ICG believes that the implementation of this agreement complies fully with § 252(e) of the Federal Act because the Agreement is consistent with the public interest, convenience and necessity. The Agreement promotes diversity in providers, provides for interconnectivity between the Parties, and will lead to increased customer choices for telecommunications services.

9. ICG respectfully requests that the Commission grant approval of Amendment-Add UNE Combining Appendix and Amendment-Add 911 Waiver without change, suspension, or other delay in its implementation. These are bilateral agreements, entered into as a result of negotiations and compromise between competitors, and ICG believes that procedures for review of the Agreement should be designed to permit expeditious implementation thereof, and that interventions should be strictly limited consistent with the scope of review specified by the Federal Act and the Commission's applicable rules.

10. The Applicable standard of review is set forth in § 252(e) of the Federal Act. Section 252(e) provides as follows:

(e) APPROVAL BY STATE COMMISSION –

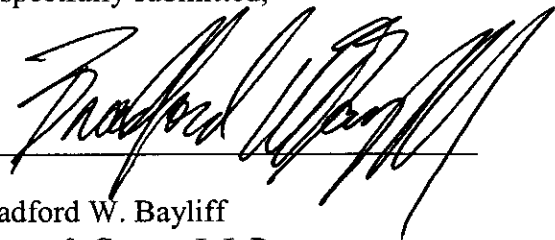
- (1) APPROVAL REQUIRED –** Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted to shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION –** The State commission may only reject –
 - (A)** an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that –

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity;

IV. Relief Sought

WHEREFORE, ICG respectfully requests that the Commission approve its acceptance of Amendment-Add UNE Combining Appendix and Amendment-Add 911 Waiver to its Missouri 271 Agreement with SWBT and grant additional relief as the Commission deems proper and reasonable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bradford W. Bayliff", is written over a horizontal line.

Bradford W. Bayliff
CASEY & GENTZ, L.L.P.
Attorneys for ICG Telecom Group, Inc.
919 Congress Avenue, Suite 1060
Austin, Texas 78701
(512) 225-0027 – Office
(512) 480-9200 – FAX

EXHIBIT 1

AMENDMENT-ADD UNE COMBINING APPENDIX

AMENDMENT

to the

INTERCONNECTION AGREEMENT

by and between

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SOUTHWESTERN BELL
TELEPHONE COMPANY**

AND

ICG TELECOM GROUP, INC.

The Interconnection Agreement ("the Agreement") by and between Southwestern Bell Telephone Company¹ ("SWBT") and ICG Telecom Group, Inc. ("CLEC") for the state of Missouri and which was previously approved by the Missouri Public Service Commission ("Commission") is hereby amended as follows:

- 1.0 AMENDMENTS TO THE AGREEMENT
- 1.1 Add UNE Combining Appendix, which is attached hereto and incorporated herein.
- 1.2 Add Schedule-UNE Combinations for Missouri, which is attached hereto and incorporated herein.
- 2.0 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 were made available to CLEC only as a result of CLEC's decision to opt into the M2A or parts thereof pursuant to Case No. TO-99-227; and (ii) therefore, no aspect of this Agreement other than the Agreed Changes set forth in this Amendment may qualify for portability into Illinois under 220 ILCS 5/13-801(b) ("Illinois Law") or Condition 27 of the Merger Order issued by the Illinois Commerce Commission in Docket No. 98-0555 ("Condition 27"). The Parties further acknowledge and agree that the Agreed Changes shall only be considered portable into Illinois under the Illinois Law and Condition 27 if they otherwise qualify for portability under such Illinois Law or Condition 27.

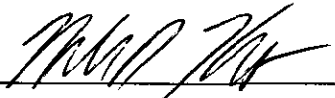
¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership, doing business as Southwestern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

3.0 MISCELLANEOUS

- 3.1 This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
- 3.2 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OR THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
- 3.3 This Amendment shall be filed with and is subject to approval by the Public Utility 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 _____ day of _____, 2002, by Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

ICG Telecomm Group, Inc.

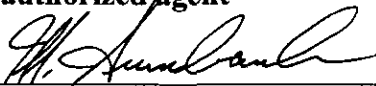
By: 

Title: EUP of operations

Name: Michael D. Kallet
(Print or Type)

Date: 12/18/02

**Southwestern Bell Telephone, L.P., d/b/a
Southwestern Bell Telephone Company
By SBC Telecommunications, Inc.,
its authorized agent**

By: 

Title: ^{For/} President - Industry Markets

Name: Mike Auinbauh
(Print or Type)

Date: 1-2-03

APPENDIX UNE COMBINING

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APPENDIX UNE COMBINING

1. INTRODUCTION

- 1.1 This Appendix, UNE Combining, sets forth the terms and conditions which govern the combining activities involving unbundled network elements (UNEs) to be performed by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC). CLEC's shall not combine or use UNEs in a manner that will impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 The terms and conditions contained in this Appendix shall supersede any conflicting terms and conditions contained within the CLEC's Interconnection Agreement. The CLEC's underlying contract must contain all the necessary UNEs to make any combination involving UNEs; there are no UNEs offered or otherwise provided for in this Appendix. Unless and until an amendment providing for any UNE not included in the Agreement is reached, a combination involved any such UNE cannot be ordered or implemented. This Appendix does not create, imply, or otherwise form the basis of any SBC-13STATE obligation to unbundle any network element or to engage in any negotiations under 47 U.S.C. §§ 251, 252 or otherwise.
- 1.4 Other than as expressly set forth in this Appendix, or as contained in the Agreement and which is not superseded per Section 1.3 of this Appendix, SBC-13STATE has no obligation to combine UNEs, or to combine a UNE with a network element possessed by CLEC.
- 1.5 As used herein, SBC-13STATE means the applicable above listed ILECs doing business Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.6 PACIFIC -As used herein, PACIFIC means the applicable above listed ILEC doing business in California.

2. GENERAL TERMS AND CONDITIONS

- 2.1 Except upon request of CLEC, SBC-13STATE shall not separate CLEC-requested UNEs that are currently combined. (47 CFR § 51.315(b)) SBC-13STATE is not prohibited from or otherwise limited in separating any UNEs not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a UNE(s) or other SBC-13STATE offering(s).
- 2.2 SBC-13STATE will not connect to or combine UNEs with any non-251(c)(3) or other SBC-13STATE offering with the exception of tariffed Collocation services.
- 2.3 UNEs may not be connected to or combined with SBC-13STATE access services or other SBC-13STATE tariffed service offerings with the exception of tariffed Collocation services where available. CLEC shall not combine or use UNEs in a manner that will impair the ability of other Telecommunications Carriers to obtain access to Unbundled Network Elements or to Interconnect with SBC-13STATE's network.

3. NEW COMBINATIONS INVOLVING UNEs

- 3.1 Subject to the provisions hereof and upon CLEC request, SBC-13STATE shall meet its combining obligations involving UNEs as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. _____, No. 00-511, 2002 WL 970643 (May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other applicable law.
- 3.2 In the event that SBC-13STATE denies a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC, SBC-13STATE shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. If such dispute cannot be resolved to the mutual satisfaction of the parties, SBC-13STATE shall initiate a proceeding before the State commission for the State in which the combination is sought, to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.*, and the Agreement, including Section 3.1 of this Appendix.
- 3.3 In accordance with and subject to the provisions of this Section 3, including Section 3.3.2 and 3.5, the new UNE combinations set forth in the Schedule(s) – UNE Combinations attached and incorporated into this Appendix UNE shall be made available to CLEC as specified in the specific Schedule for a particular State.
- 3.3.1 A "Pre-existing Combination" shall not be considered a new combination involving UNEs under this Section. A Pre-existing Combination includes all orders within the definition of "Contiguous Interconnection of Network Elements."

3.3.1.1 “Contiguous Interconnection of Network Elements” means the situation when CLEC orders all the SBC-13STATE UNEs required either

- (1) to convert to a combinations of UNEs an SBC-13STATE End User customer, another carrier’s pre-existing End User customer served exclusively using UNEs, or CLEC’s or another carrier’s resale End User customer; or
- (2) if the Pre-Existing Combination includes a local loop UNE with unbundled local switching, to activate that Pre-Existing Combination for CLEC (a) without any change in features or functionality that was being provided at the time of the order, and/or (b) the only change needed to route the operator service and directory assistance (“OS/DA”) calls from the End User customer to be served by that Pre-Existing Combination to CLEC’s OS/DA platform via customized routing, and/or (c) with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service, e.g., call waiting for residential local service, and/or (d) at the time of the order and when the order is worked by SBC-13STATE, the End User customer in question is not served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, e.g., the loop facility is being used to provide both a voice service and also an xDSL service. (Section 3.3.1.1(2)(b) only applies to orders involving customized routing after customized routing has been established to CLEC’s OS/DA platform from the relevant SBC-13STATE local switch, including CLEC’s payment of all applicable charges to establish that routing.)

3.3.1.2 Reconfigurations of existing qualifying special access services to combinations of unbundled loop and transport upon terms and conditions consistent with the FCC’s Supplemental Order Clarification, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000), shall not be considered a new combination involving UNEs hereunder.

3.3.2 The parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting telecommunications carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the Effective

Date, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, **SBC-13STATE** is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Appendix UNE, subject to the following:

- 3.3.2.1 Section 3, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, **SBC-13STATE** from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by **SBC-13STATE**. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect **SBC-13STATE** from taking any position with respect to combinations including UNEs or any issue or subject addressed or related thereto.
- 3.3.2.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's UNE combining obligations, **SBC-13STATE** shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 3.3.2.2 shall apply in accordance with its terms, regardless of any "change of law" or "intervening law" or similarly purposed or other provision of the Agreement and, concomitantly, the first sentence of this Section 3.3.2.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.
- 3.3.2.3 Without affecting the application of Section 3.3.2.2 (which shall apply in accordance with its provisions), upon notice by **SBC-13STATE**, the parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, and to eliminate any **SBC-13STATE** obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those

functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

3.3.3 For a new UNE combination listed on a Schedule – UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.

3.3.4 For a new UNE combination listed on a Schedule – UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC-13STATE, and CLEC will be charged the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered.

3.3.5 Upon notice by SBC-13STATE, the parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC-13STATE in providing the new UNE combinations set forth in the Schedule(s) – UNE Combinations, which work is not covered by the charges applicable per Section 3.3.4. For any such work that is required to be done by SBC13-STATE under Section 3.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by SBC13-STATE, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

3.4 In accordance with and subject to the provisions of this Section 3, any request not included in Section 3.3 in which CLEC wants SBC-13STATE to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC-13STATE to complete the actual combination), shall be made by CLEC in accordance with the bona fide request, special request, or equivalent process applicable under the Agreement (generically referred to in this Appendix as “BFR”).

3.4.1 In any such BFR, CLEC must designate among other things the UNE(s) sought to be combined and the needed location(s), the order in which the UNEs and any CLEC elements are to be connected, and how each connection

(e.g., cross-connected) is to be made between an SBC-13STATE UNE and the network element(s) possessed by CLEC.

- 3.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work that is required to be done by SBC13-STATE under Section 3.1. Such fee shall be calculated using the Time and Material charges as reflected in State-specific pricing. SBC-13STATE's preliminary substantive response to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests SBC-13STATE to perform work not required by Section 3.1, CLEC shall be charged a market-based rate for any such work.
- 3.5 Without affecting the other provisions hereof, the UNE combining obligations referenced in this Section 3 apply only in situations where each of the following is met:
- 3.5.1 it is technically feasible, including that network reliability and security would not be impaired;
- 3.5.2 SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;
- 3.5.3 SBC-13STATE would not be placed at a disadvantage in operating its own network;
- 3.5.4 it would not impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network; and
- 3.5.5 CLEC is
- 3.5.5.1 unable to make the combination itself; or
- 3.5.5.2 is a new entrant and is unaware that it needs to combine certain UNEs to provide a telecommunications service, but such obligation under this Section 3.5.5 ceases if SBC-13STATE informs CLEC of such need to combine.
- 3.6 For purposes of Section 3.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the UNE(s) sought to be combined are available to CLEC, including without limitation:
- 3.6.1 at an SBC-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;

- 3.6.2 for PACIFIC only, within an Adjacent Location arrangement (if provided for in the Agreement).
- 3.7 Section 3.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 3.5.5 with respect to any request for a combination involving UNEs.
- 3.8 Nothing in this Appendix or the Agreement shall impose any obligation on SBC-13STATE to provide UNEs, combinations of UNEs, or combinations of UNE(s) and CLEC's own elements beyond those obligations imposed by the Act, including the rules and orders of the FCC and Verizon Comm. Inc., and to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other Applicable Law. The preceding includes without limitation the following:
- 3.8.1 The UNE combination known as an "enhanced extended loop" or "EEL" (a combination of a UNE loop and UNE dedicated transport, with appropriate Cross-Connects, and when needed, multiplexing) shall only be provided to CLEC to the extent that the EEL is used to provide a significant amount of local exchange service to a particular End User customer (this limitation is the same as the requirements set forth in the FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000));
- 3.8.2 SBC-13STATE will not connect to or combine UNEs with any non-251(c)(3) or other SBC-13STATE offerings with the exception of tariffed Collocation services;
- 3.8.3 SBC-13STATE need not provide combinations involving network elements that do not constitute required UNEs, or where UNEs are not requested for permissible purposes.

4. RESERVATION OF RIGHTS

- 4.1 SBC-13STATE's provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). The Parties acknowledge and agree that on May 24, 2002, the United States District Court for the District of Columbia Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, No. 00-101, in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. December 9, 1999) ("the Line Sharing Order"), specifically vacated the Line Sharing Order, and remanded both these orders to the FCC for further consideration in accordance with the decision. In addition, on November 24, 1999, the FCC issued its Supplemental Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) and on June 2, 2000, its Supplemental Order Clarification, (FCC 00-183), in CC Docket 96-98 (collectively the "Orders"). By entering into this Agreement which makes available

certain UNEs, or any Amendment to this Agreement, neither Party waives any of its rights with respect to such Orders, including but not limited each Party's right to dispute whether any UNEs identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders ("order") that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party. In such event, the Parties shall have sixty (60) days from the effective date of the order to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the effective date of the order, 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.

5. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 5.1 The provisions of this Appendix are all legitimately related to each other and to the UNE rates, terms and conditions in the Agreement, and shall be subject to all other rates, terms and conditions contained in the Agreement which are legitimately related to this Appendix. Without limiting the general applicability of the foregoing, the following terms and conditions of the Agreement are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

SCHEDULE - UNE COMBINATIONS
(Missouri)

UNE-P

2-Wire Analog Loop to Analog Line Port
2-Wire Digital Loop to ISDN BRI Line Port
2-Wire Analog Loop to Analog DID Trunk Port
4-Wire Digital Loop to PRI Trunk Port
4-Wire Digital Loop to DS1 Trunk Port

EELs

2-Wire Analog Loop to DS1 or DS3 UDT
4-Wire Analog Loop to DS1 or DS3 UDT
2-Wire Digital Loop to DS1 or DS3 UDT
4-Wire Digital Loop (DS1 Loop) to DS1 or DS3 UDT

EXHIBIT 2

AMENDMENT-ADD 911 WAIVER

AMENDMENT
TO MISSOURI INTERCONNECTION AGREEMENT
BY AND BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY
AND
ICG TELECOM GROUP, INC.

This Amendment is intended to amend that certain M2A Interconnection Agreement ("Interconnection Agreement") between Southwestern Bell Telephone Company¹ ("SWBT") and ICG Telecom Group, Inc. ("CLEC") effective February 7, 2002. In the event of any conflict between the terms and conditions of the Interconnection Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall supersede and prevail.

- I. To the Interconnection Agreement's Appendix Interconnection Trunking Requirements (ITR) Section 2.4, add the following text as subsection 2.4.1:

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

2.4.1.1 Having represented and warranted to SWBT that it will only offer inbound information services, CLEC agrees that it will not provide voice service to its end users over the facilities or network elements furnished by SWBT; and

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

¹On 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, doing business as Southwestern Bell Telephone Company ("SWBT").

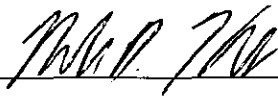
- 2.4.1.3 CLEC agrees to begin implementing access to 911 sufficiently in advance of the planned implementation of voice service to meet its 911 requirements under this Interconnection Agreement and Applicable Law. CLEC understands that the steps it must take to fulfill its 911 obligation include, but are not limited to, obtaining NXX(s) from NECA for the exchange area(s) CLEC plans to serve, submission of the appropriate form(s) to SWBT, and, following SWBT's processing of such form(s), obtaining approval from the appropriate PSAP(s) for the CLEC's 911 service architecture. CLEC further understands that PSAP approval may include testing 911 trunks with appropriate PSAP(s). CLEC understands that, based on SWBT's prior experience with CLEC implementation of 911, these steps require a minimum of sixty (60) days; and
- 2.4.1.4 CLEC agrees to indemnify and hold SWBT harmless from the consequences of CLEC's decision to not interconnect with SWBT's 911 Selective Routers. The provisions of Interconnection Agreement Article XXIV shall apply to such indemnification.
- II. 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 were made available to CLEC only as a result of CLEC's right to opt into the M2A or parts thereof pursuant to Order in Case No. TO-99-227; and (ii) therefore, no aspects of this Agreement other than the Agreed Changes set forth in this Amendment may qualify for portability under Paragraph 43 of the SBC/Ameritech Merger Conditions, approved by the FCC its *Memorandum Opinion and Order*, CC Docket 98-141, rel. (October 8, 1999) ("Paragraph 43"). The Parties further acknowledge and agree that the Agreed Changes shall be considered portable under Paragraph 43 only if they otherwise qualify for portability under that Paragraph or any other In-Region MFN Merger Conditions or provisions.
- III. This Amendment does not purport to waive either Party's obligations under Applicable Law. Each Party shall be solely responsible for complying with Applicable Law.

- IV. All other terms and conditions of the Interconnection Agreement remain unchanged.
- V. This Amendment shall be filed with and is subject to approval by the Public Utility 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 25th day of July, 2002, by SWBT, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

ICG Telecom Group, Inc.

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

Signature: 

Signature: 

Name: Michael D. Kallet
(Print or Type)

Name: Mike Auinbauh
(Print or Type)

Title: EVP of Operations, CTO

Title: President - Industry Markets

Date: 7-22-02

Date: JUL 25 2002

AECN/OCN#

(Facility Based – if applicable)