

APPENDIX  
RESALE

CONFORMED FOR ARBITRATION PETITION

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## APPENDIX RESALE

### 1. INTRODUCTION

- 1.1 This Appendix Resale is incorporated and made a part of the "Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996" between SBC-4STATE and United Communications Systems, Inc. dated as of [date] (the "Agreement"). Unless otherwise defined herein, capitalized terms in this Appendix Resale shall have the meanings assigned to such terms in this Agreement.
- 1.2 This Appendix Resale is intended by the parties to permit CLEC to have more than the number of business customers and locations permitted under the Ameritech CompleteLink Service tariffs (as defined and cited herein), and to be eligible for Additional Discounts (as defined herein and provided for herein) when CLEC's MAR exceeds the highest revenue/purchase level (tier) on which a MARC discount is provided, and not to otherwise modify or qualify the operation of Ameritech CompleteLink Service tariffs. This Appendix Resale shall be construed and applied accordingly.
- 1.3 Except as otherwise provided in this Appendix Resale or in the Agreement, all rates, terms and conditions for the Resale Services are governed by the respective SBC-4STATE Resale Tariff and Resale Notifications. *To the extent that terms and conditions contained in this Appendix Resale are in conflict with the Resale Tariff, a Resale Notification or a Service Agreement, the conflict shall be resolved as provided in Section 2.10 of the Agreement.*

### 2.0 COMPLETELINK SERVICE TERMS AND CONDITIONS

2.1 *Except as otherwise provided in this Section 2.0* **Subject to the provisions of this Sections 2.2 and 2.3, SBC-4STATE will make Ameritech CompleteLink Service available to CLEC at the rates, terms and conditions as provided within the respective state-specific Resale Tariff in effect on the date a given CompleteLink Agreement (as defined hereafter) is executed, but subject to Section 2.2.3 of the Agreement. As used in this Appendix Resale, "Ameritech CompleteLink Service" means**

*any and all access and usage volume discount plans and promotions offered to business customers during the term of or through SBC under or in association with the "CompleteLink" product name and any successor product name that replaces the "CompleteLink" family of products*

the services offered in the following tariffs and their cited pages, as may be modified from time to time: in Illinois, ILL CC No. 20, Part 22, Section 23, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised Sheet No. 49 through Original sheet No. 58); in Indiana, Catalog, Part 22, Section 3, "AMERITECH COMPLETELINK"(found as of the negotiation of this Appendix Resale at 2nd Revised sheet No. 26 through Original sheet No. 34); in Michigan, Tariff MPSC No. 20R, Part 22, Section 3, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised Sheet No. 29 through Original sheet No. 39); and in Wisconsin, PSC of W. 20, Part 22, Section 3, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised Sheet No. 38 through Original sheet No. 46), and the successor of any of them.

2.2 Notwithstanding anything to the contrary in **Section 2.1**, a Resale Tariff, a Resale Notification and/or a separate agreement between CLEC and one or more of the **SBC-4STATE** entities relating to **SBC-4STATE's** provision to CLEC of Ameritech CompleteLink Service (a "**CompleteLink Agreement**") executed on or after the Effective Date, **SBC-4STATE's** provision to CLEC of Ameritech CompleteLink Service shall be subject to the following rights, terms and conditions:

2.2.1 CLEC may subscribe to multiple Ameritech CompleteLink Service offerings and enter into multiple CompleteLink Agreements; provided no CLEC customer BTN may be on multiple CompleteLink Agreements;

2.2.2 To satisfy its MARC (as applicable in a CompleteLink Agreement) CLEC may include and aggregate under any CompleteLink Plan (as such term is used in a CompleteLink Agreement) any number of its business customers or locations within the ILEC Territory irrespective of any limitations on the number of business customers or locations that are contained in a Resale Tariff or CompleteLink Agreement;

2.2.3 CLEC may from time to time after the effective date of a CompleteLink Agreement add new business customers, locations and/or Account Telephone Numbers (ATN) ("**Additional Accounts**") to a CompleteLink Plan, and such Additional Accounts shall prospectively only, beginning as of the date such Additional Accounts are processed (1) contribute to CLEC's satisfaction of CLEC's MARC and MATUC (as defined in the CompleteLink Plan) and (2) be entitled to the usage rates set forth in the applicable CompleteLink Plan and included in the calculation of the Additional Discount defined in **Section 2.2.5** below;

2.2.4 CLEC may from time to time after the effective date of a CompleteLink Agreement remove an Account Telephone Number ("**Removed Accounts**") from a CompleteLink Plan, and such Removed Accounts shall prospectively only, beginning as of the date such Removed Accounts are processed (1) no longer contribute to CLEC's satisfaction of CLEC's MARC and MATUC and (2) not be entitled to the usage rates set forth in the applicable CompleteLink Plan and shall not be included in the calculation of the Additional Discount defined in **Section 2.2.5** below;

2.2.5 If CLEC commits under a CompleteLink Agreement to the highest prescribed "Minimum Annual Revenue Commitment" (MARC) associated with an Ameritech CompleteLink Service and exceeds that MARC, CLEC will be entitled to an additional discount (the "**Additional Discount**") (1) based on the amount CLEC's Eligible Services (as defined in the then applicable Resale Tariff in effect as provided by Section 2.2.3 of the Agreement) exceed the highest prescribed MARC associated with such Ameritech CompleteLink Service, (2) at a percentage equal to CLEC's Maximum Annual Discount divided by CLEC's MARC that is associated with such Maximum Annual MARC Discount (currently reflected in Attachment A to the applicable CompleteLink Agreement) and (3) irrespective of any "Maximum Annual MARC Discount" (as defined in the CompleteLink Agreement) (or its state-specific equivalent) limitation. In no event will CLEC be entitled to an Additional Discount on any Eligible Services revenue below the highest prescribed MARC.

2.2.5.1 Initially, the Additional Discount (estimated, based upon an annualized basis consistent with the MARC calculation) shall be calculated on a calendar quarterly basis, with the first calculation to be the first calendar quarter after the effective date of a CompleteLink Agreement. The Parties agree to cooperate to implement a solution such that the Additional Discount may be applied to CLEC on a monthly basis on CLEC's standard CompleteLink billing account.

2.2.5.2 For so long as the Additional Discount is calculated and applied on a manual basis, the Additional Discount will be applied as a credit to CLEC's CompleteLink billing account number no later than the second billing cycle that immediately follows the calendar quarterly calculation date.

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Notwithstanding the foregoing and without affecting **Section 2.4** of this Appendix Resale, SBC-4STATE reserves the right to apply the Additional Discount to any past due amounts that are not subject to a good faith dispute initiated and pursued consistent with the terms of this Agreement.

2.3 Except as provided in this Agreement, all other terms and conditions of each applicable Resale Tariff, Resale Notification and CompleteLink Agreement shall apply to SBC-4STATE's provision of Ameritech CompleteLink Service to CLEC; provided, however, in the event of any conflict or inconsistency between the terms and conditions of this Appendix Resale and the terms and conditions of the Resale Tariff and/or a CompleteLink Agreement, the Parties agree that the terms and conditions of this Appendix Resale shall control and that such CompleteLink Agreement (and CompleteLink Plan) will be interpreted to the maximum extent permissible so as to effect the intent of the Parties as set forth in this Appendix Resale.

2.4 To qualify for the Additional Discount, throughout the Term CLEC must be current and remain current in its payment obligations to SBC-4STATE on charges that are not subject to a good faith dispute initiated and pursued consistent with the terms of this Agreement.

3. *ICBs*

3.1 SBC-4STATE will make available ICBs for resale by CLEC at the rates, terms and conditions set forth in this Section 3. As used in this Appendix Resale, an "Individual Case Basis contract" or "ICB" is a specific contract between SBC-4STATE and an End User under which SBC-4STATE provides a Telecommunications Service to such End User at a rate and/or on terms and conditions that differ from an SBC-4STATE retail tariff, including Telecommunications Services that are not offered under any SBC-4STATE retail tariff.

3.2 SBC agrees to provide notice of its ICBs in accordance with this Section 3.2. When providing notice of its ICBs in accordance with this Section 3.2, SBC-4STATE may redact any End User identifying information from any ICB contracts or summaries but will ensure that any rates, terms and conditions of such ICBs are readily discernible from such contracts or summaries. Any ICB reviewed by CLEC under this Section 3.2 will be deemed the Proprietary Information of SBC-4STATE pursuant to Section 12 of the Agreement, provided, that CLEC may only use and disclose an ICB to those of its agents, employees and representatives as necessary to evaluate the resale of such ICB to an existing or prospective CLEC End User.

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3.2.1 As of the Effective Date, SBC-4STATE will have taken all action necessary, including requesting that the Commission remove any proprietary treatment provisions associated its ICBs on file with such Commission, to ensure that CLEC has non-discriminatory access to review and make copies of ICBs filed with the Commission (with End User identifying information redacted).

3.2.2 Within twenty (20) days of the Effective Date SBC-4STATE will make available on a website (the "**ICB Site**") electronic copies of either (1) all ICB contracts SBC-4STATE has executed with its End Users prior to the Effective Date (with End User identifying information redacted) or (2) a summary of such ICB contracts, with such summary to include for each unique ICB the rates, terms and conditions that differ from the underlying or related tariff or such other information necessary for a third party telecommunications carrier to evaluate whether it wishes to resell such ICB (an "**ICB Summary**").

3.2.3 Within ten (10) business days of entering into any new ICB, SBC-4STATE shall post on the ICB Site either the redacted ICB contract or an ICB Summary.

3.2.4 SBC shall include for each ICB identified on the ICB Site (whether in contract or summary form): (i) an indication as to whether such ICB is subject to the "Standard ICB Discount" or the "Custom ICB Discount" (each defined in Section 3.4.2 below); (ii) the wholesale rates that apply to such ICB; provided such rates shall not be required for ICBs subject to a Custom ICB Discount until the Commission has determined the discount that applies to such ICB as provided in Section 3.4.3 below; and (iii) any Material Condition (as defined in Section 3.3 below) that applies to such ICB.

3.3 In addition to assuming an ICB and reselling such ICB to the original End User that purchased such ICB from SBC-4STATE (the "**Original End User**"), CLEC may resell ICBs to Similarly Situated End Users other than the Original End User. As used herein, a "**Similarly Situated End User**" means an End User or an aggregation of End Users able to comply with the volume commitment, termination liability, contract term and, if applicable, any Material Conditions of such ICB, in each case as expressly stated in the ICB contract. As used herein, a "**Material Condition**" is a reasonable, non-discriminatory and narrowly tailored material justification that is the basis for the rates, terms and conditions extended to the Original End User. The Parties agree that any dispute between the Parties as to whether an End User or aggregation of End Users is a "Similarly Situated End User" will not be subject to the provisions of Section 6.0 of the Agreement unless otherwise mutually agreed by such Parties and absent such mutual agreement, the disputing Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism and, consistent with 47 C.F.R. § 51.613(b), SBC-4STATE shall bear the burden of proof to demonstrate that any restriction on the resale of an ICB is reasonable and non-discriminatory.

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3.4 SBC-4STATE will make available ICBs at the rates and on the terms and conditions prescribed for such ICB [i.e. the ICB Wholesale Discount]. As used herein, the "ICB Wholesale Discount" means one or more wholesale discount rates determined by a Commission that apply to an ICB in a given state for an ICB resold by CLEC to (i) Original End Users and (ii) Similarly Situated End Users.

3.4.1 The Parties acknowledge that the Commissions having jurisdiction in the ILC Territories subject to this Agreement have not reviewed and/or determined the specific issue of SBC-4STATE's avoidable costs under Section 252(d)(3) of the Act when making available ICBs for resale to Similarly Situated End Users. The Parties' intent is to have each Commission commence after the Effective Date an appropriate proceeding to determine the applicable ICB Wholesale Discounts. In advance of each Commission's determination of the appropriate ICB Wholesale Discount, the Parties have adopted the below presumptions and interim discounts to apply to ICBs that are resold by CLEC in a given state:

<u>State</u>	<u>Interim ICB Wholesale Discount Rate</u>	
	<u>Original End User</u>	<u>Similarly Situated End User</u>
Illinois	3.19%	As applicable, either the Standard ICB Discount or the Custom ICB Discount

3.4.2 For each ICB made available for resale, **SBC-4STATE** shall classify such ICB as eligible for the Standard ICB Discount or the Custom ICB Discount. Each ICB is presumed to be subject to the Standard ICB Discount; provided SBC may rebut this presumption as provided in Section 3.4.3 below. As used herein, the “**Standard ICB Discount**” means the standard wholesale avoided cost discount established by the Commission that applies to CLEC’s resale of services made available under the Resale Tariff and/or Resale Notification (i.e., 26.7% average) and “**Custom ICB Discount**” means the wholesale discount that applies to a specific ICB that has been approved by the Commission in accordance with the avoided cost methodology of Section 252(d)(3) of the Act.

3.4.3 Prior to the date on which the Commission establishes the ICB Wholesale Discounts and/or the Commission adopts a process by which to implement the Interim ICB Wholesale Discount Rate established by Section 3.4, the Parties shall adhere to the procedures set forth in this Section 3.4.3 to address a request by **SBC-4STATE** to establish a Custom ICB Discount. If **SBC-4STATE** wishes to rebut the presumption that a specific ICB is subject to the Standard ICB Discount, on or before the date **SBC-4STATE** is required to provide notice of such ICB pursuant to Section 3.2 above, **SBC-4STATE** shall file with the Commission a cost study and other materials requested by the Commission and/or consistent with any Commission rules or practice necessary to establish, consistent with Section 252(d)(3) of the Act, **SBC-4STATE**’s avoided costs and the applicable wholesale discount with respect to that ICB (such materials collectively referred to as “Cost Support”). **SBC-4STATE** may, but shall not be obligated to, request at the time of filing its Cost Support, that the Commission review such Cost Support to determine (i) if SBC has rebutted the presumption that such ICB should receive the Standard ICB Discount and (ii) if such presumption has been rebutted, the Custom ICB Discount rate applies to such ICB. If **SBC-4STATE** is not the party that requests the Commission to review the Cost Support, then no review of ICB will be required if and until CLEC notifies the Commission to commence such review. SBC acknowledges that third parties may, subject to Commission rules, participate in any proceeding initiated to establish the Interim ICB Wholesale Discount Rate for the subject ICB. **SBC-4STATE** shall bear the burden of proof that the ICB is not subject to the Standard ICB Discount and if such presumption is rebutted, to establish the appropriate avoided cost wholesale discount. Upon the Commission’s determination of the applicable discount rate, such rate shall be posted on the ICB Site and be made available for resale, subject to any remedy available to an interested party (including **SBC-4STATE** and CLEC) pursuant to law, equity or agency mechanism.

3.4.4 *The Parties agree that any dispute between the Parties as to whether an ICB is subject to the Standard ICB Discount or the Custom ICB Discount will not be subject to the provisions of Section 3.0 of the Agreement unless otherwise mutually agreed by such Parties and absent such mutual agreement, the disputing Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.*

3.4.5 *Within thirty (30) days of a Commission's determination of the ICB Wholesale Discounts the Parties will perform a "true-up" and **SBC-4STATE** will issue appropriate credits or bills, as needed, to CLEC to reflect as if each applicable ICB Wholesale Discount was in effect retroactive to the Effective Date. If the true-up results in additional amounts to be billed, any backbilling limitations applicable to amounts billed under this Agreement will not apply.*

3.5 *As of the Effective Date, **SBC-4STATE** will have provided CLEC all information necessary for CLEC to submit an order to resell ICBs to its End Users and **SBC-4STATE** will have implemented all necessary methods and processes to provision such orders for ICBs.*

3.6 *SBC-4STATE's provision of ICBs pursuant to this Section 3.0 is subject to the general provisions of Section 3.1 of the Agreement.*

#### 4. 3. RESERVATION OF RIGHTS, MISCELLANEOUS

3.1 The Parties acknowledge and agree that the voluntarily negotiated rates, terms and conditions set forth herein are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). In the event (1) any of the terms and conditions in this Agreement are determined to be invalid by any Governmental Authority or (2) if any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction specific to this Agreement stays, modifies, or otherwise affects any of the rates, terms and conditions herein or affecting the resale obligations of any of the **SBC-4STATE**, specifically including those arising with respect to Federal Communications Commission orders or any other proceeding, **SBC-4STATE** shall have the right to terminate this Agreement and the Appendix Resale upon 30 Business Days advanced written notice to CLEC.

3.1.1 In the event of such termination by **SBC-4STATE**, (i) all Resale Services available to CLEC will (A) automatically revert to those Resale Services available in the respective state-specific Resale Tariff and (B) be subject to the terms and conditions set forth in the respective state-specific Resale Tariff, and (ii) **SBC-4STATE** will

waive any and all applicable termination charges or liability(ies) associated with the withdrawn offering and waive any service connection, service order and other applicable charges for only that automatic reversion under (i)(A).

4.1 3.2 The Parties acknowledge that (i) the entirety of this Appendix Resale and its provisions are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code (even if Section 252(i) does not apply to this Agreement or Appendix Resale), and (ii) as to this Appendix Resale and its provisions and the CompleteLink tariffs set forth in **Section 2.1** of this Appendix Resale, they are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code (even if Section 252(i) does not apply to this Agreement or Appendix Resale). In the event that a governmental entity allows another requesting telecommunications carrier to "pick and choose" provisions from this Appendix Resale under Section 252(j) or a similar ability or obligation or to sever this Appendix Resale (in whole or in part) from the CompleteLink tariffs set forth in Section 2.1 or otherwise allow this Appendix Resale (in whole or in part) to be used with any other SBC-4STATE tariff or services not included with the Contributory Services, SBC-4STATE shall have the right to terminate this Agreement and this Appendix Resale in the affected state upon thirty (30) Business Days advanced written notice to CLEC.

### 3.3 Severability.

If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement as a total arrangement and it is intended to be nonseverable. Accordingly, if the Parties are unable to negotiate replacement language that is mutually satisfactory, then either party may terminate this Agreement on 30 business days prior written notice.

3.3.1 In the event of such termination by SBC-4STATE, Section 3.1.1 shall likewise apply.

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- 3.4 This Agreement, including the Appendix Resale, does not affect either SBC-4STATE's right or ability to modify any of its tariffs, as may occur from time to time, or the application of any such modification to any of CLEC's Ameritech CompleteLink Agreements or Ameritech CompleteLink Service plans, including those subject to this Appendix Resale. Wherever any tariff is cited or quoted herein or is applicable hereunder (which includes the Ameritech CompleteLink Service tariffs cited in Section 2.1 hereof), it is understood that (i) any revisions or modifications to said tariff is also encompassed hereunder, and (ii) said tariff is limited in application to only the SBC-14STATE entity within the state where said tariff is filed.
- 3.5 Survival. The following terms and conditions of this Resale Appendix are specifically agreed by the Parties to continue beyond the expiration or termination of this Resale Appendix or the Agreement until the last expiration of a Service Agreement entered into or purchased during the Term: [Section 2.2, Section 2.3, Section 2.4, Section 2.5, Section 3.1, Section 3.3, and Section 3.4]