

ATTACHMENT A
TO
SBC'S RESPONSE TO UCS PETITION FOR ARBITRATION

Agreed Upon Text: Regular Font
UCS Proposed Text: Italicized
SBC Proposed Text: Underline

RESALE AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

between one or more of

**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,
Wisconsin Bell, Inc. d/b/a SBC Wisconsin**

and

**UNITED COMMUNICATIONS SYSTEMS, INC.
D/B/A CALL ONE**

TABLE OF CONTENTS
Conform to Final Agreement

1. DEFINITIONS.....	3
2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY.....	6
3. GENERAL RESPONSIBILITIES OF THE PARTIES	9
4. EFFECTIVE DATE, TERM, AND TERMINATION	23
5. END USER FRAUD.....	24
6. DISPUTE RESOLUTION.....	27
7. AUDITS	31
8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES	32
9. NOTICES.....	33
10. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS	33
11. NO LICENSE.....	34
12. CONFIDENTIALITY	34
13. INTERVENING LAW	35
14. GOVERNING LAW.....	35
15. COMPLIANCE AND CERTIFICATION	40
16. LAW ENFORCEMENT	41
17. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR	41
18. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY	42
19. SUBCONTRACTING.....	42
20. FORCE MAJEURE.....	42
21. TAXES.....	43
22. NON-WAIVER	44
23. CONFLICT OF INTEREST	45
24. SURVIVAL	45
25. SCOPE OF AGREEMENT	45
26. AMENDMENTS AND MODIFICATIONS.....	45
27. AUTHORITY.....	45
28. COUNTERPARTS.....	46
29. ENTIRE AGREEMENT.....	46

**INTERCONNECTION AND/OR RESALE AGREEMENT
UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), by and between one or more of the SBC Communications Inc.-owned ILEC's 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, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (only to the extent that the agent for each such SBC-owned ILEC executes this Agreement for such SBC-owned ILEC and only to the extent that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and, United Communications Systems, Inc. d/b/a Call One ("CLEC"), (an Illinois corporation), shall apply to the state(s) of Illinois, Indiana, Michigan and Wisconsin.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the "Act"), the Parties wish to establish terms for the purchase by CLEC of certain 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, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, retail Telecommunications Services and certain other services for resale by CLEC to its local exchange End User(s) within the state(s) listed above;

WHEREAS, for purposes of this Agreement, CLEC intends to operate where one or more of 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, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin is the incumbent Local Exchange Carrier(s) and CLEC, a competitive Local Exchange Carrier, has or, prior to the purchasing of Resale Services, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the foregoing ILEC Service areas by the appropriate State Commission(s);

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Attachments and Appendices, which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement. When used to determine a conflict among the General Terms and Conditions and any Attachments and Appendices, the term "Agreement" means Articles 1 through 32 of these General Terms and Conditions.

1. DEFINITIONS

Capitalized Terms used in this Agreement shall have the respective meanings specified below and/or as defined elsewhere in this Agreement.

1.1 General Definitions

1.1.1 "Act" means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified through 47 U.S.C.

1.1.2 "Applicable Law" means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement, including without limitation the rules and orders of the FCC and the Commission.

1.1.3 "As Defined in the Act" means as specifically defined by the Act.

1.1.4 "As Described in the Act" means as described in or required by the Act.

- 1.1.5 **"Business Day"** means Monday through Friday, excluding holidays on which the applicable SBC-owned ILEC does not provision new retail services and products.
- 1.1.6 **"Claim"** means any pending or threatened claim, action, proceeding or suit.
- 1.1.7 **"Commission"** means the applicable State agency with regulatory authority over Telecommunications. Unless the context otherwise requires, use of the term **"Commissions"** means all of the four agencies listed in this Section. The following is a list of the appropriate State agencies:
- 1.1.7.1 the Illinois Commerce Commission (IL-CC);
 - 1.1.7.2 the Indiana Utilities Regulatory Commission (IN-URC);
 - 1.1.7.3 the Michigan Public Service Commission (MI-PSC);
 - 1.1.7.4 the Public Service Commission of Wisconsin (PSC-WI).
- 1.1.8 **"Consequential Damages"** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, 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.
- 1.1.9 **"Customer Usage Data"** means the Telecommunications Services usage data of a CLEC End User measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by **SBC-4STATE** and forwarded to CLEC.
- 1.1.10 **"Delaying Event"** means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 1.1.10.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
 - 1.1.10.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
 - 1.1.10.3 any Force Majeure Event.
- 1.1.11 **"Dialing Parity"** is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.
- 1.1.12 **"End Users"** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. 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.
- 1.1.13 **"FCC"** means the Federal Communications Commission.
- 1.1.14 **"Fraud Monitoring System"** means an off-line administration system that monitors suspected occurrences of ABS-related fraud.
- 1.1.15 **"Governmental Authority"** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.

- 1.1.16 **"Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.1.17 **"Loss" or "Losses"** means 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).
- 1.1.18 **"Party"** means either CLEC or the SBC-owned ILEC. **"Parties"** means both CLEC and each of the SBC-owned ILEC(s) that is a party to this Agreement.
- 1.1.19 **"Person"** means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 1.1.20 **"Resale Notification"** means any notifications, accessible letters or advices distributed by **SBC-4State** regarding any Telecommunications Service or promotional offerings that **SBC-4State** is required to make available to CLEC for resale As Described in the Act, and as required by Applicable Law.
- 1.1.21 **"Resale Services"** means any Telecommunications Service **SBC-4State** provides at retail to subscribers that are not telecommunications carriers As Described in the Act that is required to be resold under Applicable Law. As used in this Agreement, Resale Services specifically include but are not limited to those Telecommunications Services that are available under a Resale Tariff, Resale Notification and any ICB required to be resold under Applicable Law and this Agreement.
- 1.1.22 **"Resale Tariff"** means the state-specific tariff then in effect that governs each of SBC-4State's resale of tariffed Resale Services.
- 1.1.23 **"SBC Communications Inc." (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, 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.
- 1.1.24 **"SBC-4STATE"** - As used herein, **SBC-4STATE** 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, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, and Wisconsin.
- 1.1.25 **"SBC ILLINOIS"** - As used herein, **SBC ILLINOIS** means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.
- 1.1.26 **"SBC INDIANA"** - As used herein, **SBC INDIANA** means Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.
- 1.1.27 **"SBC MICHIGAN"** - As used herein, **SBC MICHIGAN** means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned doing business in Michigan.
- 1.1.28 **"SBC WISCONSIN"** - As used herein, **SBC WISCONSIN** means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.

1.1.29 **"Service Agreement"** means an agreement entered into by CLEC and **SBC-4STATE** that confirms and/or acknowledges CLEC's purchase of Resale Services pursuant to the Resale Tariff or a Resale Notification and includes additional rates, terms and conditions by which CLEC will purchase and **SBC-4STATE** will provide such Resale Services; provided in order to be deemed a "Service Agreement" under this Agreement, such additional terms and conditions must include a financial commitment by CLEC to purchase Resale Services for a specific volume, term or dollar amount. By way of example only, a CompleteLink Agreement (as defined in the Appendix Resale) and CLEC's purchase and resale of a Telecommunications Service offered on an individual case basis (ICB) that requires CLEC to commit to a minimum volume and/or term would both be considered "Service Agreements".

1.1.30²⁹ **"Third Party"** means any Person other than a Party.

2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

2.1 Definitions and Headings

2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

2.1.2 The headings and numbering of sections, parts, and appendices to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

2.1.3 This Agreement incorporates a number of appendices that, together with their associated attachments, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular appendix or attachment may otherwise have.

2.2 Tariff References

SBC Note on §§ 2.2.1 and 2.2.2: The language "or in any Service Agreement" is not necessary if the Commission does not include the definition of "Service Agreement" in § 1.1.29.

2.2.1 Subject to Section 2.2.3 below, wherever Wherever any Commission ordered tariff provision or rate is incorporated, cited or quoted herein or in any Service Agreement, it is understood that said cite encompasses any revisions or modifications to said tariff.

2.2.2 Wherever any *Commission ordered* tariff provision or rate is incorporated, cited or quoted herein or in any Service Agreement, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered that tariff.

2.2.3 *Resale Services purchased by CLEC under a Service Agreement will be governed by the tariff provisions in effect on the date CLEC entered into such Service Agreement, irrespective of any future revisions or modifications to said tariff.*

2.2.4 **SBC-4STATE** reserves the right to withdraw its tariffs in accordance with Applicable Law.

2.3 Joint Work Product

2.3.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel 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.

2.4 Severability

2.4.1 The Parties intended the terms and conditions of this Agreement to be a total arrangement and nonseverable. However, 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. If the Parties are unable to agree upon an amendment pursuant to the previous sentence, the dispute shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

2.5 Scope of Obligations

2.5.1 Notwithstanding anything to the contrary contained herein, **SBC-4STATE's** obligations under this Agreement shall apply only to:

2.5.1.1 the specific operating area(s) or portion thereof in which **SBC-4STATE** is then deemed to be the ILEC under the Act (**the "ILEC Territory"**), and only to the extent that the CLEC is operating and offering telecommunications service (as defined in the Act) to End Users identified to be residing in such ILEC Territory, it being explicitly understood by the Parties that SBC-4STATE's obligations under this Agreement apply only to Resale Services by CLEC within (and not extending beyond) SBC-4STATE's incumbent local exchange areas, and that SBC-4STATE is not obligated to provision Resale Services or provide any other rights under Section 251(c) of the Act outside of SBC-4STATE's incumbent local exchange areas.

2.5.1.2 assets that **SBC-4STATE** owns or leases and which are used in connection with **SBC-4STATE's** provision to CLEC of any Resale Services, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the **"ILEC Assets"**); and

2.5.1.3 and be available to CLEC for purchasing services within an **SBC-4STATE** incumbent local exchange area(s) in the State in which this Agreement has been approved by the Commission and is in effect, and only where CLEC has been certified as a local exchange carrier by the appropriate Commission and is authorized to provide the services it has contracted to provide herein.

2.6 Affiliates

2.6.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind **SBC-4STATE**, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between **SBC-4STATE** and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein until either **SBC-4STATE** or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supercede a currently effective interconnection agreement between any such CLEC Affiliate and **SBC-4STATE** until the expiration of such other agreement.

2.7 The Parties acknowledge and agree that this Agreement incorporates certain provisions, specifically Sections [LIST ARBITRATED SECTIONS] as set forth above and noted with asterices ("the Non-Voluntary Terms"), into the Agreement that were ordered by the IL-CC decisions in the proceedings identified in the footnotes to such Non-Voluntary Terms [INSERT] ("Decisions") and are being provided to CLEC as a result of such Decisions. The Parties have identified some but not all of the Non-Voluntary Terms and the applicable Decisions, and no Party's rights under this paragraph shall be prejudiced in the event a Non-Voluntary Term or Decision is not so designated herein. The Parties further acknowledge and agree that the Non-Voluntary Terms in this Agreement are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). In the event that 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 stays, modifies such Decisions or otherwise affects such Non-Voluntary Terms, either Party may, by providing written notice to the other Party, require that such Non-Voluntary Terms be deleted or renegotiated, as applicable and consistent with such Decision, in good faith and that the Agreement be amended accordingly. If such modifications to the Agreement are not executed within sixty (60) calendar days after the date of such notice, a Party may pursue any rights available to it under the Agreement. The Parties further acknowledge and agree that because the Non-Voluntary Terms are being incorporated herein solely due to the Decisions and constitute arbitration results, the Parties acknowledge that the Non-Voluntary Terms contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Term. Non-Voluntary and legitimately related Terms do not qualify for portability into Illinois under 220 ILCS 5/13-801(b), Condition 27 of the SBC/Ameritech Merger Order issued by the IL-CC in Docket No. 98-0555, or any other state or federal statute, regulation, order or legal obligation, if any.

2.8 State-Specific Rates, Terms and Conditions

2.8.1 For ease of administration, this multistate Agreement contains certain specified rates, terms and conditions that apply only in a designated state ("**state-specific terms**"). To the extent that this Agreement contains specified rates, terms and conditions which apply only in a given

state, such rates, terms and conditions shall not apply and shall have no effect in any other state(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

2.8.2 State-specific terms, as the phrase is described in Section 2.8.1 above, have been negotiated (or in the case of 2.7 above, included in the Agreement per state requirement) by the Parties only as to the states where this Agreement has been executed, filed and approved. When the Parties negotiate an agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating state-specific terms for the state in which are to apply.

2.9 Successor Rates. Certain of the rates, prices and charges set forth in the applicable Appendix Resale have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term a Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Resale Services, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 6.

2.10 Conflict in Provisions.

2.10.1 In the event of a conflict between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

2.10.2 *The operative documents by which **SBC-4STATE** will provide CLEC Resale Services, functions, facilities, products or services include (i) this Agreement (including the Appendix Resale), (ii) the terms and conditions of referenced tariffs (including applicable Resale Tariffs) and Resale Notifications and (iv) Service Agreements. Conflict among these documents as to the terms and conditions of service, including the applicable discount and/or any restrictions or limitations on CLEC's resale of a Resale Service, will be resolved in the following manner:*

2.10.2.1 *This Agreement (including the Appendix Resale) shall control over the Resale Tariff, a Resale Notification and any Service Agreement executed during the Term.*

2.10.2.2 *A Service Agreement shall control over the Resale Tariff or a Resale Notification.*

2.11 Incorporation by Reference. The terms of this Agreement, and every Resale Service, function, product or service provided hereunder, shall be subject to all rates, terms and conditions contained in the appendices to this Agreement which are legitimately related to such Resale Service, function, product or service; and all such rates, terms and conditions are incorporated by reference herein and deemed a part of every Resale Service, function, product or service provided hereunder.

3. GENERAL RESPONSIBILITIES OF THE PARTIES

3.1 Resale Services

3.1.1 **SBC-4STATE** will provide CLEC with Resale Services in accordance with section 251(c)(4) of the Act and in accordance with the specific terms and conditions described in this Agreement, any Resale Tariff, any Resale Notification and any appendix referenced herein, to the extent required by Applicable Law. **SBC-4STATE** shall make the Resale Services available to CLEC

on terms and conditions that are reasonable and nondiscriminatory in accordance with section 251(c)(4)(B) of the Act and Applicable Law.

3.1.1.1 *Except as (i) specifically provided by the Act, (ii) expressly permitted under Applicable Law or (iii) found to be reasonable and non-discriminatory after review by a Commission in accordance with 47 C.F.R. § 51.613(b), SBC-4STATE will not impose restrictions on the resale by CLEC of Resale Services unless and until SBC-4STATE has proved to the Commission that such restriction is reasonable and nondiscriminatory.*

3.1.1.1 Telecommunications Services will be offered by SBC-4STATE to CLEC for resale on terms and conditions that are reasonable and nondiscriminatory.

3.1.1.2 Parity. Except as otherwise expressly provided herein, for Telecommunications Services that are offered by SBC-4STATE to SBC-4STATE's End Users through tariff(s), the rules and regulations associated with SBC-4STATE's retail tariff(s) shall apply when the services are resold by CLEC, with the exception of any tariff resale restrictions; provided, however, any tariff restrictions on further resale by the End User shall continue to apply. Use limitations shall be in parity with services offered by SBC-4STATE to its End Users.

3.1.2 Aggregation. Subject to Section 3.1.2.1, except where otherwise explicitly permitted in SBC Illinois' corresponding retail tariff(s), CLEC shall not permit the sharing of a service by multiple End Users or the aggregation of traffic from multiple End Users onto a single Resale Service.

3.1.2.1 To the extent required by Applicable Law and subject to (i) any Material Condition (as defined in Section 3.1.21.3 herein) of the particular Resale Service at issue; (ii) Sections 3.1.5.1 and 3.1.11 herein, (iii) any reasonable and non-discriminatory economic justification for prohibiting aggregation, and (iv) any aggregated End Users being Similarly Situated (as defined in Section 3.1.21.3 herein) to the original End User;

3.1.2.1.1 With respect to volume usage discount offerings, CLEC may, for purposes of complying with SBC Illinois' high-volume discount minimum usage requirements of a Resale Service, aggregate individual End User accounts on a given offering to meet the minimal usage requirement of such offering.

3.1.2.1.2 As used above, a "volume usage discount offering" is one in which the CLEC commits to purchasing a high volume of usage in a particular offering in exchange for a discount. Volume discount offerings shall not include, by way of example only, offerings in which the End User receives a high or unlimited volume of the service at issue for a flat or variable rate (e.g., optional calling plans offering unlimited calls for a flat monthly fee).

3.1.2.1 For Resale Services offered by SBC-4STATE in each of its ILEC Territories subject to this Agreement, CLEC may aggregate individual End User accounts located within SBC-4STATE together in a single Service Agreement. For Resale Services that are state-specific promotions offered via a Resale Notification, CLEC may aggregate individual End User accounts within the applicable state in a single Service Agreement.

- 3.1.3 SBC-4STATE will make available the Resale Services to CLEC at the applicable rates and/or subject to the appropriate wholesale discount(s) prescribed by the appropriate Commission, including those applicable rates and/or discounts referenced in a Resale Tariff, Resale Notification or as otherwise set forth in this Agreement and its appendices.
- 3.1.4 Promotions. **SBC-4STATE** will make available Long Term Promotions to CLEC for resale (i) at the retail promotional rate less the applicable state-specific wholesale discount and (ii) as of the first date **SBC-4STATE** retail makes such Long Term Promotions available to its retail End Users. Except and to the extent as otherwise required by Applicable Law, SBC need not make available Short Term Promotions to CLEC for resale. As used herein, a "Short Term Promotion" is a promotional offering (i) of a Telecommunications Service (as defined in the Act) that (A) **SBC-4STATE** provides at retail to subscribers that are not telecommunications carriers and (B) that SBC-STATE is required to resell pursuant to Section 251(c)(4) of the Act and (ii) which (A) is offered for a period of ninety (90) days or less, and (B) no benefit can be realized by the End User more than ninety (90) days after the promotional offering is taken by the End User if such offering is for ninety (90) days or less, and (iii) is not used to evade the obligation to offer Long Term Promotions for resale, for example, by making available a sequential series of ninety (90) day promotions. A promotional offering that meets the definition under (i)(A) and (i)(B) above for Short Term Promotions but is offered for a period of more than ninety (90) days is referred to herein as a "Long Term Promotion". **SBC-4STATE** agrees to provide CLEC notice of Long Term Promotions via a Resale Notification as required by Applicable Law or, absent any requirement, not less than thirty (30) calendar days before such promotions are generally offered to **SBC-4STATE** retail End Users. Except as otherwise required by Applicable Law, SBC-4STATE need not provide notice to CLEC of any Short Term Promotions.
- 3.1.5 *Removal of MADs.*
- 3.1.5.1 *Except as found to be reasonable and non-discriminatory after review by a Commission in accordance with 47 C.F.R. § 51.613(b), if CLEC has committed to the highest prescribed revenue/purchase level (tier) associated with a given volume discount Resale Service offering, no "Maximum Annual Discount" or similar term or condition that limits or restricts the discount CLEC may achieve under such volume discount offering shall apply to CLEC's purchase of such volume discount offering.*
- 3.1.5.1 Nothing in this Agreement shall be deemed to permit CLEC to ignore or otherwise avoid a Maximum Annual Discount ("MAD") or any other term or condition of the service being resold.
- 3.1.5.2 *For so long as SBC-4STATE provides its retail End Users that exceed their Maximum Annual Discount (or other state-specific term) a discount above such Maximum Annual Discount, SBC-4STATE shall extend such additional discount to CLEC, calculated in the same manner as SBC-4STATE calculates such additional discount for its retail End Users.*
- SBC Note on § 3.1.6: The issue of aggregation is already addressed in § 3.1.2.
- 3.1.6 *Aggregation Rights. Except as found to be reasonable and non-discriminatory after review by a Commission in accordance with 47 C.F.R. § 51.613(b), when providing a volume-based Resale Service to CLEC (e.g., CompleteLink) SBC-4STATE will not impose on CLEC any*

limitations on the number of business End Users or locations that may be associated with such volume-based Resale Service.

3.1.7 Eligibility Certification. When ordering a Resale Service that has an imposes a Commission approved eligibility requirement, including a "save" or "winback" promotional offering, CLEC will provide SBC-4STATE evidence sufficient to establish that CLEC's End User's are eligible for such promotion ("Eligibility Certification") and CLEC shall maintain records of such Eligibility Certification for the term of its relationship with the End User and for one (1) year thereafter. CLEC shall be able to resell "save" and "winback" offerings in parity with SBC's retail offering, so that, for example, when eligibility and certification requirements refer to End Users who have left SBC to establish service with another "competitive local exchange carrier", when applied to CLEC said term shall mean another local exchange carrier (facilities-based, including SBC-4STATE, or resale.) Eligibility Certification consists of the following:

3.1.7.1 For "save" eligibility requirements, CLEC must retain on file either (i) copies of original documentation from another local exchange carrier (facilities- or resale-based, including SBC-4STATE) addressed to the End User, designed to persuade the End User to switch its local service provider and dated within the run date of the "save" offering or (ii) written certification signed by an authorized representative of the End User that such End User has either received documentation described in clause (i) above from and/or been solicited directly or indirectly by another local exchange carrier (including SBC-4STATE) in a manner designed to persuade such End User to switch its local service provider.

3.1.7.2 For "winback" eligibility requirements, CLEC must retain on file either (i) copies of a bill sent by CLEC to an End User and a subsequent bill sent to such End User by another local service provider (facilities- or resale-based, including SBC-4STATE) or (ii) written certification signed by an authorized representative of the End User that such End User has committed (verbally or in writing) to switch its local service to another local service provider during the time CLEC is providing such local service and prior to accepting CLEC's "winback" offer.

SBC Note on § 3.1.8: SBC believes this provision should be moved to the Ordering and Billing section, specifically § 7.11.

3.1.8 As-Is Orders. Orders for Resale Services placed by CLEC to convert an existing account "as-is", without any changes, additions or deletions requested by CLEC, may be submitted by CLEC in an "AS-IS" format in accordance with SBC-13STATE LSOR, and SBC-4STATE may not require CLEC to submit such order in an "AS-SPECIFIED" format to (1) accommodate any limitations SBC-4STATE's Operational Support Systems or Methods and Procedures may have to process such orders or (2) remove any features or products (e.g., optional calling plans) not made available for resale by SBC-4STATE.

3.1.9 Non-Discriminatory Access to OSS. SBC-4STATE will provide CLEC non-discriminatory access to SBC's Operations Support Systems, *including making the same information available to CLEC on Customer Service Records (CSRs) that SBC-4STATE makes available to its retail representatives.*

3.1.10 Termination Penalty Calculations.

- 3.1.10.1 Provided CLEC or its agent (the "Requesting Party") has obtained appropriate authorization from an End User, SBC-Illinois will provide the Requesting Party within three (3) business days of the Requesting Party's request any applicable termination charges or penalties (including the basis therefore and/or calculation thereof) for (i) any services listed in covered by the IL-CC's Final Order in Docket No. 00-0024 (the "Termination Liability Order") and (ii) (A) any services SBC-Illinois or any of its Affiliates provides to such End User in Illinois and (B) which SBC-Illinois (or its Affiliate) can impose on such End User if it switches its provider of such services to CLEC.
- 3.1.10.2 SBC-Illinois agrees that any request by a Requesting Party for a calculation of contract termination liability for an SBC-Illinois End User pursuant to Section 3.1.10.1 above will be deemed the proprietary information of the Requesting Party pursuant to Section 12 of this Agreement and notwithstanding anything to the contrary in Section 12.2 of this Agreement, SBC-Illinois further agrees not to directly or indirectly (1) disclose to its retail sales or account management organization(s) that the Requesting Party has requested such calculation and/or (2) permit its retail business unit(s) to contact the End User for which such termination liability is requested in an effort to engage in any "save", "winback" or "retention" discussions.
- 3.1.11 Grandfathered Services. Grandfathered services are available per appropriate state specific tariff to CLEC for resale at the applicable discount only to the same End User, at the existing End User's location, to which SBC-4STATE provides the service, either at retail or through resale.
- 3.1.12 Plexar and Centrex. CLEC shall only sell Plexar®, Centrex and Centrex-like services to a single End User or multiple End User(s) in accordance with the terms and conditions set forth in the corresponding SBC-4STATE retail tariff(s) applicable within that state.
- 3.1.13 CLEC shall only resell services to the same category of End User(s) to whom SBC-4STATE offers such services (for example, residence service shall not be resold to business End Users).
- 3.1.13.1 CLEC may only resell "special needs services" as identified in associated state specific tariffs to persons who are eligible for each such service. As used herein, the term "special needs services" means services for the physically disabled where the disability is related to vision, speech, hearing or motion. Further, to the extent CLEC resells services that require certification on the part of the End User, CLEC shall ensure that the End User has obtained proper certification, continues to be eligible for the program(s), and complies with all rules and regulations as established by the appropriate Commission and the state specific SBC-4STATE tariffs.
- 3.1.13.2 SBC ILLINOIS LifeLine and Link-Up services are not available for resale.
- 3.1.13.3 CLEC is exclusively responsible for all aspects of any similar CLEC-offered program, including ensuring that any similar CLEC-offered program(s) complies with all applicable federal and state requirements, obtaining all necessary End User certifications and re-certifications, submitting written designation that any of CLEC's End User or applicants are eligible to participate in such programs, submitting CLEC's claims for reimbursement to any applicable governmental authority and any other activities required by any applicable governmental authority.

- 3.1.14. CLEC shall not use a resold service to avoid the rates, terms and conditions of SBC-4STATE's corresponding retail tariff(s).
- 3.1.15. CLEC shall not use resold local Telecommunications Services to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers; provided, however, that CLEC may permit its End Users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.
- 3.1.16. A Federal End User Common Line charge and any other appropriate Commission-approved charges, as set forth in the appropriate SBC-4STATE federal and applicable state tariff(s), will apply to each local exchange line furnished to CLEC under this Agreement.
- 3.1.17. To the extent allowable by law, CLEC shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to CLEC for resale. CLEC shall pay all charges for PIC and LPIC changes at the tariffed rate(s).
- 3.1.18. SBC-4STATE shall provide the services covered by this Agreement subject to availability of existing facilities and on a nondiscriminatory basis with its other customers.
- 3.1.19. CLEC shall be responsible for providing to its End Users and to SBC-4STATE a telephone number or numbers that CLEC's End Users may use to contact CLEC in the event that the End User desires a repair/service call. In the event that CLEC's End Users contact SBC-4STATE with regard to repair requests, SBC-4STATE shall inform such to call CLEC and may provide CLEC's contact number.
- 3.1.20. [Reserved]

SBC Note on § 3.1.21: This text is from Section 3 of the Resale Appendix that was attached to UCS' Petition. SBC believes that the Resale Appendix is no longer necessary as the bulk of its terms and conditions (Section 2 therein) was a voluntary offering by SBC applicable only if the parties avoided arbitration. Given that UCS filed for arbitration, SBC has withdrawn that offer and the only relevant remaining terms are the following ones contained in this § 3.1.21 that address ICBs.

- 3.1.21. ICBs.
- 3.1.21.1. SBC Illinois will make available ICBs for resale by CLEC at the rates, terms and conditions set forth in this Section 3.1.21. As used in this Agreement Appendix Resale, an "Individual Case Basis contract" or "ICB" is a specific written contract between SBC Illinois and an End User under which SBC Illinois provides only a Telecommunications Service or Telecommunications Services that is/are required to be resold under Applicable Law to such End User at a rate and/or on terms and conditions that differ from an SBC Illinois retail tariff, including Telecommunications Services that are required to be resold under Applicable Law that are not offered under any SBC Illinois retail tariff.
- 3.1.21.2. SBC Illinois agrees to provide notice of its ICBs in accordance with this Section 3.1.21.2. When providing notice of its ICBs in accordance with this Section 3.1.21.2, SBC Illinois may redact any End User identifying information from any ICB contracts or summaries as well as any SBC proprietary information 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

3.1.21.2 will be deemed the Proprietary Information of SBC Illinois 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.

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 previously accorded its ICBs on file with such Commission, to ensure that CLEC has nondiscriminatory access to review and make copies of ICBs filed with the Commission (with End User identifying information redacted).

3.1.21.2.1 Within twenty (20) days of the Effective Date SBC Illinois will make available on a website (the "ICB Site") electronic copies of either (1) all ICB contracts SBC Illinois has executed with its End Users after prior to the Effective Date (with End User identifying information and SBC proprietary information redacted), such postings of any new ICB to occur within ten (10) business days of entering into such new ICB, 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"). Any ICB may be removed from the ICB Site, and shall no longer be available for resale to new end users, six (6) months from the ICB's effective date.

SBC Note on UCS' proposed § 3.2.3: SBC has folded this requirement into 3.1.21.2.1 immediately above.

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.

3.1.21.2.2 Nothing herein shall preclude SBC Illinois from foregoing the process described in this Section 3.1.21.2 if and to the extent the Commission assumes responsibility for such functions.

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.

3.1.21.3 In addition to assuming an ICB and reselling such ICB to the original End User that purchased such ICB from SBC Illinois (the "Original End User"), CLEC may resell ICBs to Similarly Situated End Users other than the Original End User. CLEC may

(i) assume an ICB for the remaining term only; or (ii) subject to the last sentence of 3.1.21.2.1 above, resell an ICB to a Similarly Situated End User for the same term to end no later than the same month as the contract provided to the Original End User. As used herein, a "Similarly Situated End User" means an End User or an aggregation (subject to Section 3.1.2 above) of End Users who, as compared to the Original End User (i) are in the same class (i.e., residential versus business), (ii) do not have different network architecture or configuration requirements, and (iii) are able to comply with the volume commitment, termination liability, contract term and, if applicable, any Material Condition(s) of such ICB (e.g., the service or a feature or functionality of the service is available from a specific wire center only), in each case as expressly stated in the ICB contract. As used herein, a "Material Condition" is a reasonable and non-discriminatory and narrowly tailored material justification that is relevant to 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 nondiscriminatory.

3.1.21.4 SBC Illinois will make available ICBs at the rates and on the terms and conditions prescribed above and by such ICB less the ICB Wholesale Discount. As used herein, the "ICB Wholesale Discount" means the one or more wholesale discount rates determined by the ICC 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.

3.1.21.4.1 The Parties acknowledge that the ICC has Commissions having jurisdiction in the ILEC Territories subject to this Agreement have not reviewed and/or determined the specific issue of SBC Illinois' 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 the ICC each Commission commence after the Effective Date an appropriate proceeding to determine the applicable ICB Wholesale Discounts. In advance of the ICC's 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:

Original End User

3.16%

Similarly Situated End User

As applicable, either the
Standard ICB Discount or the
Custom ICB Discount
4.6%

3.1.21.4.2 Nothing herein shall obligate SBC Illinois to make ICBs available for resale below its long run service incremental cost.

- 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 Notifications (i.e., 20.7% 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 that 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 requests 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 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.

3.1.21.4.35 Within thirty (30) days of a Commission's determination of the ICB Wholesale Discounts the Parties will perform a "true-up" and SBC Illinois will issue appropriate credits or bills, as needed, to CLEC to reflect as if the 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.

3.1.21.5 As of the Effective Date, SBC Illinois will have provided CLEC all information necessary for CLEC to submit an order to resell ICBs to its End Users and SBC Illinois will have implemented all necessary methods and processes to provision such orders for ICBs. Nothing herein shall require SBC Illinois to develop and/or implement an electronic ordering and provisioning process, and SBC Illinois shall have the right to handle such process manually, at its sole discretion.

3.1.21.6 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, when applicable.

3.2 Insurance Requirements

3.2.1 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:

3.2.2 Commercial General Liability insurance with minimum limits of: \$1,000,000 General Aggregate limit; \$500,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$500,000 each occurrence sub-limit for Personal Injury and Advertising. The other Party must be named as an Additional Insured on the Commercial General Liability policy.

3.2.3 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 3.2 of this Agreement.

3.2.4 The Parties agree that companies affording the insurance coverage required under Section 3.2 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.

3.2.5 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

3.2.6 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance.

3.2.6.1 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a

nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

- 3.2.7 This Section 3.2 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement.
- 3.3 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert its state-specific authorized and nationally recognized OCN/AECNs for Resale Services on the signature page of this Agreement and provide **SBC-4STATE** with a copy.
- 3.4 Assignment
- 3.4.1 CLEC may not assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of **SBC-4STATE**, which consent shall not be unreasonably withheld; provided that CLEC may assign or transfer this Agreement to its Affiliate by providing ninety (90) calendar days' prior written notice to **SBC-4STATE** of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate if that Affiliate is a party to a separate agreement with **SBC-4STATE** under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void ab initio.
- 3.4.2 As a minimum condition of any assignment or transfer of this Agreement (or any rights hereunder) that is permitted under or consented to by **SBC-4STATE** pursuant to this Section 3.4, CLEC agrees that any change, modification or other activity required for **SBC-4STATE** to accommodate or recognize the successor to or assignee of CLEC shall be a CLEC Change and shall be subject to Section 3.4.3, below. **SBC-4STATE** shall have no obligation to proceed with such activities nor shall any otherwise acceptable assignment or transfer be effective against **SBC-4STATE** until the Parties agree upon the charges that apply to such CLEC Change.
- 3.4.3 In the event that CLEC makes any corporate name change (whether it involves a merger, consolidation, assignment or transfer, and including addition or deletion of a d/b/a), change in OCN/AECN, or makes or accepts a transfer or assignment of this Agreement or a change in any other CLEC identifier (collectively, a "CLEC Change"), CLEC shall submit written notice to **SBC-4STATE** within thirty (30) days of the first action taken to implement such CLEC Change. Within thirty (30) days following receipt of that notice, the Parties shall negotiate rates to compensate **SBC-4STATE** for the expenses to be incurred by **SBC-4STATE**, if any, to make the CLEC Change to the applicable **SBC-4STATE** databases, systems, records and/or recording announcement(s) for CLEC branded/repair calls. In addition, CLEC shall compensate **SBC-4STATE** for any service order charges and/or service request charges associated with such CLEC Change. **SBC-4STATE**'s agreement to implement a CLEC Change is conditioned upon CLEC's agreement to pay all reasonable charges billed to CLEC for such CLEC Change.
- 3.4.4 If during the Term **SBC-4STATE** sells, assigns or otherwise transfers any ILEC Territory or ILEC Assets to a person other than an Affiliate or subsidiary, **SBC-4STATE** shall provide CLEC not less than ninety (90) calendar days prior written notice of such sale, assignment or transfer. Upon the consummation of such sale, assignment or transfer, CLEC acknowledges that **SBC-4STATE** shall have no further obligations under this Agreement with respect to the ILEC Territories and/or ILEC Assets subject to such sale, assignment or transfer, and that CLEC must establish its own Section 251 and 252 arrangement with the successor to such ILEC Territory and/or ILEC Assets.

3.5 **Good Faith Performance.** Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

3.6 Termination Liability.

3.6.1 If CLEC elects to terminate an SBC Illinois retail contract which CLEC had previously assumed, CLEC will be assessed the applicable termination charges remaining unless CLEC elects to simultaneously replace the existing contract with a contract of greater term and/or volume at the same discount CLEC receives for the previously assumed but now terminated contract.

3.6.2* *Term Liability Exception. If the Customer Service Record (CSR) for an End User obtained by CLEC fails to reflect the existence of a term liability penalty in a retail contract, including ICB contracts, and the existence of a term liability penalty is discovered after the End User switches to CLEC, then SBC-Illinois will allow, at the End User's request, the End User to re-establish service with SBC-Illinois under the terms of its original agreement and it will waive the assessment of term liabilities or other penalties in connection with its attempted change in service if the End User is released from its obligations by CLEC.*

3.7 **Performance Measurement/Recourse Credits.** **SBC-4STATE** will provide performance and recourse credits to CLEC in accordance with the Appendix Performance Measurements and Appendix Recourse Credits.

4. ANCILLARY SERVICES

4.1 911 Service. Where available, **SBC-4STATE** will afford CLEC's End Users the ability to make 911 calls. When requested by **SBC-4STATE**, CLEC shall provide **SBC-4STATE** with accurate and complete information regarding CLEC's End User(s) in a format and time frame prescribed by **SBC-4STATE** for purposes of E911 administration. In the areas served by **SBC-4STATE**, any 911 fees or surcharges associated with Resale accounts shall be included by **SBC-4STATE** on CLEC's invoice and CLEC agrees to pay **SBC-4STATE** all such fees and surcharges. **SBC-4STATE** shall then be responsible for submitting or retaining such fees and surcharges in accordance with the appropriate 911 cost recovery plan applicable to the local jurisdiction.

4.1.1 Should any CLEC End User assert any Claim that relates to access to 911, the limitations of liability set forth in Appendix 911, which is attached to the Agreement, shall govern all Claims that may be asserted against any Party to this Agreement relating to access to 911, whether such assertion is made by the other Party or any Third Party, and such provisions are incorporated herein for all purposes as though set forth herein.

4.2 White Pages. Subject to **SBC-4STATE**'s practices, as well as the rules and regulations applicable to the provision of White Pages directories, **SBC-4STATE** will include in appropriate White Pages directories the primary alphabetical listings of all CLEC End Users located within the local directory scope. The rules, regulations and **SBC-4STATE** practices are subject to change from time to time.

* This Section 3.6.2 is available only in the state of Illinois. The Parties agree that this language is a non-voluntary offering by **SBC Illinois** and arises from the following order: Order of the Illinois Commerce Commission in McLeodUSA Telecommunications Services, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company (Ameritech Illinois) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket 01-0623. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Section 2.7.

- 4.3 Additional Listing services may be purchased by CLEC for its End Users on a per listing basis.
- 4.4 Liability relating to End User Listings.
- 4.4.1 CLEC hereby releases **SBC-4STATE** from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided to **SBC-4STATE** under this Agreement, and/or CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.
- 4.4.2 In addition to any other indemnity obligations in this Agreement, and notwithstanding anything to the contrary herein, CLEC shall indemnify, protect, save harmless and defend **SBC-4STATE** and **SBC-4STATE's** officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in CLEC's End User listing information, including any error or omission related to non-published or non-listed End User listing information. CLEC shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against CLEC and **SBC-4STATE**, and/or against **SBC-4STATE** alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in CLEC's End User listing information in the White Pages directory, **SBC-4STATE** may, at its option, assume and undertake its own defense, or assist in the defense of the CLEC, in which event the CLEC shall reimburse **SBC-4STATE** for reasonable attorney's fees and other expenses incurred by **SBC-4STATE** in handling and defending such demand, claim and/or suit.
- 4.5 Each CLEC subscriber will receive one copy per primary End User listing of **SBC-4STATE's** White Pages directory in the same manner and at the same time that they are delivered to **SBC-4STATE's** subscribers.
- 4.5.1 If CLEC's End User already has a current **SBC-4STATE** local White Pages directory, **SBC-4STATE** shall not be required to deliver a directory to that End User until new White Pages directories are published for that End User's location.
- 4.6 Subject to any blocking that may be ordered by CLEC for its End Users', to the extent Directory Assistance (DA) services are provided to **SBC-4STATE** End Users, **SBC-4STATE** shall provide CLEC's End Users access to **SBC-4STATE** Directory Assistance services. CLEC shall pay **SBC-4STATE** the charges attributable to Directory Assistance services utilized by CLEC's End Users.
- 4.7 Subject to any blocking that may be ordered by CLEC for its End Users', **SBC-4STATE** will provide access to Operator Services ("OS") to CLEC's End Users to the same extent it provides OS to its own End Users. CLEC shall pay the charges associated with the utilization of OS by CLEC's End Users. Discounts associated with the utilization of OS are set forth in Appendix Pricing.
- 4.8 **SBC-4STATE** offers CLEC the opportunity to customize route its End Users' OS/DA calls where technically feasible.
- 4.9 OS/DA Branding
- 4.9.1 Where technically feasible and/or available, **SBC-4STATE** will brand Operator Services (OS) and/or Directory Assistance (DA) in CLEC's name as outlined below:
- 4.9.2 Call Branding
- 4.9.2.2 **SBC-4STATE** will brand OS/DA in CLEC's name based upon the information provided by CLEC and as outlined below:

- 4.9.3 CLEC will provide written specifications of its company name to be used by SBC-4STATE to create CLEC specific branding announcements for its OS/DA calls in accordance with the process outlined in the Operator Services OS/DA Questionnaire (OSQ).
- 4.9.4 CLEC name used in branding calls may be subject to Commission regulations and should match the name in which CLEC is doing business.
- 4.10 Branding Load Charges. An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of CLEC specific branding. In addition, a per call charge applies for every OS call handled by SBC-4STATE on behalf of CLEC when such services are provided. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement.
- 4.11 When an SBC-4STATE Operator receives a rate request from a CLEC End User, where technically feasible and available, SBC-4STATE will quote the applicable OS/DA rates as provided by the CLEC.
- 4.12 CLEC will furnish OS/DA Rate and Reference Information in accordance with the process outlined in the Operator Services Questionnaire (OSQ). CLEC will furnish to SBC-4STATE a completed OSQ thirty (30) calendar days in advance of the date when the DA Services are to be undertaken.
- 4.13 CLEC will inform SBC-4STATE, via the Operator Services Questionnaire (OSQ) of any changes to be made to such Rate/Reference Information fourteen calendar days prior to the effective Rate/Reference change date. CLEC acknowledges that it is responsible to provide SBC-4STATE updated Rate/Reference Information in advance of when the Rate/Reference Information is to become effective.
- 4.14 An initial non-recurring charge will apply per state, per Operator assistance switch for loading of CLEC's OS Reference/Rater information. An additional non-recurring charge will apply per state, per Operator assistance switch for each subsequent change to either the CLEC's OS Reference or Rater information.
- 4.15 Suspension and Restoral Service
- 4.15.1 CLEC may offer to resell Customer Initiated Suspension and Restoral Service to its End Users at the associated state specific retail tariff rates, terms and conditions for suspension of service at the request of the End User.
- 4.15.2 SBC-4STATE will offer CLEC local service provider initiated suspension service for CLEC's purposes at the associated SBC-4STATE state specific retail tariff rate for company initiated suspension of service. Service specifics may be obtained in state specific CLEC Handbooks.
- 4.15.2.1 CLEC shall be exclusively responsible for placing valid orders for the suspension and the subsequent disconnection or restoral of service to each of its End Users.
- 4.15.2.2 Should CLEC suspend service for one of its End Users and fail to submit a subsequent disconnection order within the maximum number of calendar days permitted for a company initiated suspension pursuant to the state specific retail tariff, CLEC shall be charged and shall be responsible for all appropriate monthly service charges for the End User's service from the suspension date through the disconnection date.
- 4.15.2.3 Should CLEC suspend service for one of its End Users and subsequently issue a restoral order, CLEC shall be charged the state specific tariff rate for the restoral plus all appropriate monthly service charges for the End User's service from the suspension date through the restoral date.

54. EFFECTIVE DATE, TERM, AND TERMINATION

- 54.1 The "Effective Date" of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 54.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on one (1) year ~~three (3) years~~ plus 90 days, (the "Term"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 54.3 or 54.4.
- 54.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Resale Service, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 54.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.
- 54.4 If pursuant to Section 54.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 54.5 through 54.9. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 54.4 other than its obligations under Sections 54.5 and 54.6.
- 54.5 Upon termination or expiration of this Agreement in accordance with this Section 54:
- 54.5.1 Each Party shall continue to comply with its obligations set forth in Sections 12, 14, 16 and 295; and
- 54.5.2 Each Party shall promptly pay all amounts owed under this Agreement and, if applicable, place any Disputed Amounts into an escrow account that complies with Section 8.4.5 hereof.
- 54.6 If either Party serves notice of expiration or termination pursuant to Section 4.2 or Section 4.4, CLEC shall have ten (10) calendar days to provide SBC-4STATE written confirmation if CLEC wishes to pursue a successor agreement with SBC-4STATE or instead affirmatively state that CLEC does not wish to pursue a successor agreement with SBC-4STATE for a given state and allow its relationship with SBC-4STATE to terminate co-terminus with this Agreement. CLEC shall identify the action to be taken within each applicable (4) state(s). If CLEC wishes to pursue a successor agreement with SBC-4STATE, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with SBC-4STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 54.7 If CLEC does issue its Section 252(a)(1) request pursuant to Section 54.6, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act and (ii) the date that is ten (10) months after the date on which SBC-4STATE received CLEC's Section 252(a)(1) request.
- 54.8 If CLEC withdraws its Section 252(a)(1) request prior to or after the expiration date or termination date of this Agreement, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with SBC-4STATE for a given state. If CLEC withdraws its Section 252(a)(1)

request prior to the expiration of the Term, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the Term, and 2) the date that is ninety one (91) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If CLEC withdraws its Section 252(a)(1) request after the expiration of the Term then the terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the ninety-first (91st) calendar day following **SBC-4STATE**'s receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request and (ii) the effective date of the successor agreement that is adopted by CLEC under Section 252(i) of the Act.

- 54.9 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with **SBC-4STATE** in its, as applicable, notice of expiration or termination or the written confirmation described in Section 54.6 after receipt of the SBC-owned ILEC's notice of expiration or termination pursuant to Section 4.2, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the expiration of the Term. If the Term has expired when CLEC receives notice of termination from **SBC-4STATE** pursuant to Section 54.4 and CLEC does not affirmatively state that it wishes to pursue a successor agreement with **SBC-4STATE** as described in Section 54.6, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the date that is ninety-one (91) days after CLEC received notice of termination from **SBC-4STATE** under Section 54.4.
- 54.10 In the event of termination of this Agreement pursuant to Section 54.9, **SBC-4STATE** and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.
- 4.11 *Notwithstanding any termination or expiration of this Agreement, the term of a Service Agreement is terminable only in accordance with its terms and shall be unaffected by the termination or expiration of this Agreement. The termination or expiration of this Agreement will however, unless otherwise agreed by the Parties, terminate the ability of CLEC to enter into any new Service Agreements under the terms of this Agreement.*

65. END USER FRAUD AND BLOCKING

- 65.1 **SBC-4STATE** shall not be liable to CLEC for any fraud associated with CLEC's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (**ABS**); provided, however, that, subject to Section 6.5 below, if CLEC has ordered Toll Billing Exception (TBE) blocking of ABS on a given End User account and SBC-4STATE fails to provision such blocking within five (5) business days, SBC-4STATE will be liable to CLEC for any ABS-related fraud associated with that account. ABS is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABS calls: calling card, collect, and third number billed calls.
- 65.2 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.
- 65.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 65.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 65.4 **SBC-4STATE** will provide notification messages via fax to CLEC on suspected occurrences of ABS-related fraud on CLEC accounts stored in the applicable LIDB

65.4.2 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.

65.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification information twenty-four (24) hours per day seven (7) days per week.

65.4.4 For each alert notification provided to CLEC, CLEC may request a corresponding thirty-day (30-day) historical report of ABS-related query processing. CLEC may request up to three reports per alert.

6.5 If CLEC does not wish to be responsible for payment of charges for collect, third number billed, toll and information services (for example, 900) calls, it must order the appropriate blocking for lines provided under this Agreement and pay any applicable charges. It is the responsibility of CLEC to order the appropriate toll restriction or blocking on lines resold to End Users. CLEC acknowledges that blocking is not available for certain types of calls, including 800, 888, 411 and Directory Assistance Express Call Completion. Depending on the origination point, for example, for calls originating from correctional facilities, some calls may bypass blocking systems. CLEC acknowledges all such limitations and accepts all responsibility for any charges associated with calls for which blocking is not available and any charges associated with calls that bypass blocking systems.

7. ORDERING AND BILLING.

7.1 SBC-4STATE shall allow CLEC to place service orders and receive phone number assignments (for new lines). These activities shall be accomplished by facsimile or electronic interface. SBC-4STATE shall provide interface specifications for electronic access for these functions to CLEC. However, CLEC shall be responsible for modifying and connecting any of its systems with SBC-4STATE-provided interfaces, as outlined in Appendix OSS. Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line, as amended by SBC-4STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.

7.2 CLEC will have the ability to report trouble for its End Users to the appropriate SBC-4STATE trouble reporting center(s) twenty-four (24) hours a day, seven (7) days a week. CLEC will be assigned customer contact center(s) when initial service agreements are made. CLEC End Users calling SBC-4STATE will be referred to CLEC at the number provided by CLEC. Nothing herein shall be interpreted to authorize CLEC to repair, maintain, or in any way touch SBC-4STATE's network facilities, including those on End User premises.

7.3 Prior to submitting an order under this Appendix, CLEC shall obtain End User authorization as required by applicable federal and state laws and regulations, and assumes responsibility for applicable charges as specified in Section 258(b) of the Act. SBC-4STATE shall abide by the same applicable laws and regulations.

7.4 Only an End User can initiate a challenge to a change in its local service provider. If an End User notifies SBC-4STATE or CLEC that the End User requests local exchange service, the Party receiving such request shall be free to provide service to such End User, except in those instances where the End User's account is local PIC protected. It is the responsibility of the End User to provide authorization in a FCC approved format to the current provider of record to remove local service provider protection before any changes in local service provider are processed. SBC-4STATE shall be free to connect an End User to any competitive local exchange carrier based upon that competitive local exchange carrier's request and that competitive local exchange carrier's assurance that proper

End User authorization has been obtained. CLEC shall make any such authorization it has obtained available to SBC-4STATE upon request and at no charge.

- 7.5 When an End User changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the End User's direction or the direction of the End User's authorized agent. Further, when an End User abandons its premise, SBC-4STATE is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.
- 7.6 Neither Party shall be obligated by this Appendix to investigate any allegations of unauthorized changes in local exchange service (slamming) on behalf of the other Party or a Third Party. If SBC-4STATE, on behalf of CLEC, agrees to investigate an alleged incidence of slamming, SBC-4STATE shall charge CLEC an investigation fee as set forth in Appendix Pricing or the applicable tariff.
- 7.7 Should SBC-4STATE receive an order from CLEC for services under this Agreement, and SBC-4STATE is currently providing the same services to another local service provider for the same End User, CLEC agrees that SBC-4STATE may notify the local service provider from whom the End User is being converted of CLEC's order coincident with or following processing CLEC's order. It shall then be the responsibility of the former local service provider of record and CLEC to resolve any issues related to the End User. This Section 7.7 shall not apply to new or additional lines and services purchased by the End User from multiple CLECs or from SBC-4STATE.
- 7.7.1 If SBC-4STATE receives an order from another local service provider to convert services for an End User for whom CLEC is the current local service provider of record, and if CLEC already subscribes to the Local Disconnect Report ("LDR"), covered in Section 7.7.2, then SBC-4STATE shall notify CLEC of such order coincident with or following processing such order. It shall be the responsibility of CLEC and the other local service provider to resolve any issues related to the End User. This Section 7.7.1 shall not apply to new or additional lines and services purchased by an End User from multiple CLECs or from SBC-4STATE.
- 7.7.2 On no less than sixty (60) calendar days advance written notice, CLEC may, at its option, subscribe to the LDR. SBC-4STATE will furnish the following information via the LDR: the Billing Telephone Number ("BTN"), Working Telephone Number ("WTN"), and terminal number of all End Users who have disconnected CLEC's service. Information furnished electronically will be provided daily on a per WTN basis and priced on a per WTN basis. CLEC shall pay SBC-4STATE for the LDR per WTN plus any applicable transmission charges for the LDR; current WTN prices are as set forth in Appendix Pricing or the applicable tariff. CLEC agrees that SBC-4STATE may change the per WTN charge, at SBC-4STATE's sole discretion, so long as SBC-4STATE provides CLEC no less than thirty (30) calendar days notice prior to any change in the per WTN charge. SBC-4STATE grants to CLEC a non-exclusive right to use the LDR information provided by SBC-4STATE. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information.
- 7.8 Unless otherwise stated, SBC-4STATE will render monthly bill(s) to CLEC for the services contemplated hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party. Remittance in full of all bills rendered is due within thirty (30) calendar days of each bill date (the "Bill Due Date"). If any charge becomes Past Due, the unpaid amounts will accrue interest from the Bill 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 Bill Due Date to and including the date that the payment is actually made and available.

7.9 CLEC shall make all payments to SBC-4STATE via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by SBC-4STATE. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and SBC-4STATE will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by SBC-4STATE no later than the Bill Due Date of each bill or Late Payment Charges will apply. SBC-4STATE is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees. Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.

7.10 Interexchange carried traffic (for example, sent-paid, information services and alternate operator services messages) received by SBC-4STATE for billing to resold End User accounts will be returned as unbillable and will not be passed to CLEC for billing. An unbillable code will be returned with those messages to the carrier indicating that the messages originated from a resold account and will not be billed by SBC-4STATE.

7.11 [Placeholder for As-Is Orders provision, currently at Section 3.1.8]

7.12 When an End User converts existing service to CLEC resold service of the same type without any additions or changes, charges for such conversion will apply as set forth in Appendix Pricing or the applicable tariff, and are applied per billable telephone number.

7.12.1 When an End User(s) subscribes to CLEC resold service, recurring charges for the service shall apply at the wholesale discount set forth in Appendix Pricing or the applicable tariff. The tariff rates for such resold service shall continue to be subject to orders of the appropriate Commission.

7.12.2 When CLEC converts an End User(s) existing service and additions or changes are made to the service at the time of the conversion, the normal service order charges and/or non-recurring charges associated with said additions and/or changes will be applied in addition to the conversion charge. Discounts may or may not apply for non-recurring service order charges.

7.12.3 For the purposes of ordering service furnished under this Agreement, each request for new service (that is, service not currently being provided to the End User on SBC-4STATE's network, without regard to the identity of that End User's non-facilities based local service provider of record) shall be handled as a separate initial request for service and shall be charged per billable telephone number.

86. DISPUTE RESOLUTION

86.1 Finality of Disputes

86.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement 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.

86.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

86.1.3 Notwithstanding anything contained in this Agreement to the contrary, a billing Party shall be entitled to submit a bill (which shall include the same documentation and detail customarily included with the billing party's bills) and recover those charges that were unbilled or under-billed within the twelve (12) months immediately preceding the date on which such unbilled or under-billed charges were supposedly incurred by the billed Party. For purposes of this Section 86.1.3, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the billing cycle in which billed Party used such service.

86.2 Alternative to Litigation

86.2.1 The Parties desire to resolve disputes arising out of this Agreement 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 or its breach.

86.3 Commencing Dispute Resolution

86.3.1 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. 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:

86.3.1.1 Service Center (**SBC-4STATE**)

86.3.1.2 Informal Dispute Resolution; and

86.3.1.3 Formal Dispute Resolution, each of which is described below.

86.4 LSC/ Service Center/LEC-C Dispute Resolution -the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written notice sent to **SBC-4STATE** for Disputed Amounts must be made on the "13-State Billing Claims Dispute Form".

86.4.1 If the written notice given pursuant to Section 86.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 86.4 shall be used and the dispute shall first be referred to the appropriate service center [**SBC-4STATE** Service Center] for resolution. In order to resolve a billing dispute, CLEC shall furnish **SBC-4STATE** written notice of (i) the date of the bill in question, (ii) CBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed, (vi) amount in question and (vii) the reason that CLEC disputes the billed amount.

86.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on **SBC-4STATE**'s current billing statements within thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 86.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, **SBC-4STATE** will notify CLEC of the status of the dispute and the expected resolution date.

86.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 86.4.1), **SBC-4STATE** will notify CLEC of the status of the dispute and the expected resolution date.

86.4.4 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 86.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to

invoke the Informal Resolution of Disputes afforded pursuant to Section 86.5 of this Agreement.

8.4.5 Escrow. The Billed Party shall pay (i) when due, all undisputed amounts to the Billing Party, and (ii) within thirty (30) days after its written notice of dispute, except as otherwise provided in Section 8.4.5.1 below, place all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. To be acceptable, the third party escrow agent must meet all of the following criteria: The financial institution proposed as the third party escrow agent must be located within the continental United States; the financial institution proposed as the third party escrow agent may not be an affiliate of either Party; and the financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) credit transactions transfers. In addition to the foregoing requirements for the third party escrow agent, the disputing Party and the financial institution proposed as the third party escrow agent must agree that the escrow account will meet all of the following criteria: The escrow account must be an interest bearing account; all charges associated with opening and maintaining the escrow account will be borne by the disputing Party; none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the third party escrow agent; all interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and disbursements from the escrow account shall be limited to those: authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement) or made in accordance with the final, non-appealable order or award of an arbitrator appointed pursuant to the provisions of Sections 8.7.1 or made in accordance with the final, non-appealable order of the court that had jurisdiction to enter an arbitrator's award pursuant to Section 8.7.1. Disputed Amounts in escrow shall be subject to interest as set forth in Section 7.8 herein.

86.4.5.1 *In SBC Illinois, SBC Wisconsin and SBC Michigan, the Billed Party shall not be required to place Disputed Amounts in escrow, notwithstanding anything to the contrary in an applicable Resale Tariff, if the Billed Party: (i) does not have a proven history of late payments and has established a minimum of twelve (12) consecutive months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing dispute), and (ii) the Billed Party has not filed more than three (3) previous billing disputes that were resolved in Billing Party's favor within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute or, if the bill containing the disputed charges is not the first bill for a particular service to the Billed Party, the Billed Party's dispute does not involve 50% or more of the total amount of the previous bill out of the same billing system.

* This Section 86.4.5.1 is available only in the states of Illinois, Wisconsin and Michigan. The Parties agree that this language is a non-voluntary offering by SBC Illinois, SBC Wisconsin and SBC Michigan and consistent with the following orders: Order of the Illinois Commerce Commission in TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket 01-0338; Order of the Public Service Commission of Wisconsin in TDS Metrocom, Inc. Petition for Arbitration of Interconnection Terms, Conditions and Prices from Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin, Docket 05-MA-123; Order of the Michigan Public Service Commission in the matter of the Petition for Arbitration to establish an Interconnection Agreement between TDS Metrocom, Inc., and Ameritech Michigan, Case No. U-12952. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS, Section 2.7.

86.5 Informal Resolution of Disputes

86.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 86.3 or Section 86.4.4, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. 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.

86.6 Formal Dispute Resolution

86.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 86.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 86.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than thirty (30) calendar days after receipt of the letter initiating Dispute Resolution under Section 86.4.4.

86.6.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 6.7 below:

86.6.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 86.3. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 86.3, the Parties will annualize the actual number of months billed.

86.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 86.7 if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

86.6.4 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

86.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

86.6.4.2 Actions to compel compliance with the Dispute Resolution process.

86.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

86.7 Arbitration

86.7.1 Disputes subject to mandatory or elective arbitration 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. Each arbitration will be held in **Chicago, Illinois** unless the Parties agree otherwise.

The arbitration hearing will be requested to commence within thirty (30) 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, 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.

97. AUDITS

- 97.1 Subject to the restrictions set forth in Section 142 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.
- 97.1.1 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) 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.
- 97.1.2 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 thirtieth 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.
- 97.1.3 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 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 Proprietary Information and information that reveals the identity of End Users of Audited Party.

97.1.4 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.

97.1.5 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, bill 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 the applicable Resale Tariff (depending on the SBC-owned 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.

97.1.6 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, *as applicable, either the reasonable fees and expenses of the Auditing Party if its internal resources are used to conduct such audit or, if an independent auditor is used, the remaining three-quarters (3/4) one-quarter of any independent auditor's fees and expenses if an independent auditor is utilized 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.*

97.1.7 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 97.1. Notwithstanding anything in this Agreement to the contrary, any Any additional audit shall be at the requesting Party's expense.

108. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

108.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT (INCLUDING ANY APPENDICES HERETO) OR INCLUDED IN A RESALE TARIFF REFERENCED IN THIS AGREEMENT OR A SERVICE AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE RESALE SERVICES, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.