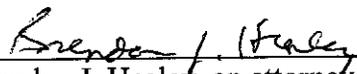


**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.)	
d/b/a Call One)	
)	
Petition for Arbitration of an)	
Interconnection Agreement with)	
Illinois Bell Telephone Company)	ICC Docket No. 03-0772
d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
Act of 1996)	

NOTICE OF FILING

Please take notice that on March 22, 2004, the undersigned filed United Communications Systems, Inc.'s Reply Brief in Support of Motion to Strike.



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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
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**UNITED COMMUNICATIONS SYSTEMS, INC.'S
REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE**

Negotiated Request:	August 31, 2003
135 th Day Thereafter:	January 13, 2004
160 th Day Thereafter:	February 7, 2004
9 Months Thereafter:	June 1, 2004

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.)	
d/b/a Call One)	
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Illinois Bell Telephone Company)	ICC Docket No. 03-0772
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252(b) of the Telecommunications)	
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**UNITED COMMUNICATIONS SYSTEMS, INC.’S
REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE**

United Communications Systems, Inc. (“UCS”) respectfully submits this reply brief in support of its motion, filed March 1, 2004, to strike portions of the Direct Testimony of Illinois Bell Telephone Company d/b/a SBC Illinois (“SBC”).

ARGUMENT

I. Because SBC’s Testimony and Response to Petition Are Unverified, They Must Be Stricken.

SBC does not—indeed cannot—controvert the argument made in UCS’ opening brief that SBC’s testimony failed to comply with two separate provisions of the Commission’s rules requiring that its Response and written statements be “verified.” Instead, it points to the fact that in other dockets, SBC submitted unverified testimony that—absent any objection by an opposing party—was not stricken. The fact that SBC has gotten away with its failure to comply with the Commission’s rules in instances in which its non-compliance was not brought to the attention of the Commission or an Administrative Law Judge does not mean that the Commission must forever allow SBC to flout its rules, even when SBC’s noncompliance is brought to the Court’s attention.

SBC also suggests that the absence of verification is excusable because its witnesses will adopt their testimony under oath at the hearing. But the Commission's Rules do not provide for a witness to adopt his or her testimony under oath at a hearing; rather, they require that the testimony be verified *at the time it is submitted*. See 83 Ill. Admin. Code § 761.110(b) (“Verified responses and verified written statements . . . shall be filed no more than 25 days after the filing of the petition for arbitration.”).

Rules mean nothing if they may be flouted with impunity. The Commission should enforce its procedural rules by striking non-compliant testimony.

II. The Commission Should Strike SBC's Testimony Addressing Issues Raised by UCS that SBC Avoided Discussing in its Response.

In its opening brief, UCS demonstrated that SBC's testimony concerning the 32 issues raised by UCS should be stricken because the Commission's rules only allow a respondent to file testimony that constitutes “respondent's support for its response.” 83 Ill. Admin. Code § 761.110(e). SBC first contends that pursuant to 47 U.S.C. § 252(b)(3) that it was not required to file a response. Regardless, the consequences provided by the Commission's rules are that since SBC has no response to “support” on these issues, it may not avail itself of “supporting testimony.”

Pointing to an attachment to its Response, SBC also contends that it did in fact address UCS Issues 1-32 in its Response; however, the words of SBC's Response itself contradict SBC's contention. SBC's Response itself stated as follows: “SBC Illinois will not undertake to set forth its positions regarding the issues raised by UCS' Petition in this Response, because that is not the purpose of a response to a petition under the 1996

Act.”¹ SBC explained that it would instead set forth “its positions regarding the issues raised in UCS’s Petition” in the testimony and briefs that it would file at a later date.²

SBC does not deny that contending that “it is not the purpose of a response to a petition under the 1996 Act” to set forth the respondent’s position with respect to the issues raised by the petitioner was a novel position for it; as UCS showed in its opening brief, SBC has addressed the petitioner’s issues in every prior Response in this millennium. It is comical that SBC contends in its opposition brief that “SBC Illinois’ Response requests that the Commission resolve the arbitration issues in SBC Illinois’ favor based not only on the reasons set forth in the Response but also ‘for the reasons to be set forth in SBC Illinois’ subsequent submissions.’” There were no “reasons set forth in the Response” (at least not as to UCS issues 1-32), and SBC’s assertion that such “reasons” existed does not make it so. Moreover, the fact that the Response foreshadowed that in “subsequent submissions” SBC would set forth some arguments to “support” its non-existent positions on UCS’ Issues 1-32 does not create any positions for the subsequently filed testimony to support.

The short of it is that as long as the Commission allows SBC to engage in gamesmanship by refusing to answer legitimate discovery questions, and concealing its position from the Commission and the parties until the last possible minute, SBC will do exactly that, and the arbitration process and the public interest will suffer.

¹ SBC Response, filed January 29, 2004, at 3. SBC’s contention that the redline attachment to its Response “addressed” the issues raised in UCS’ Petition is of course belied by the text of SBC’s Response, disavowing any intention to “set forth its positions regarding the issues raised by UCS’ Petition in this Response.” Moreover, it should be self-evident that an attachment to a filing is not the filing itself.

² *Id.* at 2-3.

III. The Commission Should Strike SBC’s Testimony Regarding Matters on Which SBC Refused to Respond to Discovery on Grounds of Relevance.

In its opening brief, UCS argued that SBC’s testimony regarding avoided cost studies in other states should be stricken because SBC has refused, on grounds of relevance, to produce the studies and supporting documentation. SBC contends that the testimony should be stricken only if SBC’s refusal to produce is sustained, and does not argue that even if its refusal to produce is sustained, the testimony should be allowed. UCS agrees; since this motion will likely be ruled upon either at the same time as or after UCS’ motion to compel, the Administrative Law Judge should strike the referenced SBC testimony if the discovery requested by UCS regarding SBC’s cost studies is not compelled.³

IV. The Commission Should Strike SBC’s 15 New Issues and the Accompanying Testimony Because They Reflect SBC’s Breach of the Duty to Negotiate in Good Faith.

In its opening brief, UCS showed that when a party has failed to present an issue during negotiations, that party could not raise the issues in its Petition or Response. SBC does not deny this common sense assertion. Instead, based solely on the plainly deficient affidavit of Ronald C. Hill (“Hill Affidavit”), SBC makes the obviously false claim that it actually *did* raise its 15 new issues “during negotiations.” This claim must be rejected for two reasons. First, paragraphs 3-8 of the Hill Affidavit, which SBC uses to support its position, should be stricken. The Hill Affidavit is inadmissible under Ill. Supreme Court Rule 191. The Hill Affidavit should also be stricken to the extent it involves testimony Mr. Hill is not competent to offer. In addition, the Hill Affidavit reveals settlement

³ In its footnote 3, SBC argues that it should be permitted to discuss in its briefs the findings of the commissions from other states regarding SBC’s cost studies. UCS agrees. In this motion, UCS asks the Commission only to exclude material from SBC’s testimony, not from SBC’s briefs.

negotiations, and SBC takes the position that such evidence is inadmissible.⁴ Second, even if the Hill Affidavit were to be considered, there is still no support for the claim that SBC proposed this language during pre-petition negotiations.

A. Paragraphs 3-8 of the Affidavit of Ronald C. Hill Should Be Stricken.

As an initial matter, SBC's reliance upon the Hill Affidavit is impermissible in three respects, two of which have been relied upon by SBC in moving to strike evidentiary material offered by UCS.

1. SBC's Submission of the Hill Affidavit Violates Illinois Supreme Court Rule 191.

The Hill Affidavit falls short of the criteria set forth in Illinois Supreme Court Rule 191 in at least two ways. As Mr. Hill admits in the affidavit, several of his statements are not made upon personal knowledge. *See* S. Ct. R. 191(a) (noting that affidavits "shall be made on the personal knowledge of the affiants"). The Hill Affidavit, also does not contain the required statement that Mr. Hill can competently testify to the facts stated therein if called as a witness. *See id.* (stating that affidavit "shall affirmatively show that the affiant, if sworn as a witness, can testify competently"). The Hill Affidavit therefore should be stricken in its entirety.

2. The Hill Affidavit Should Be Stricken to the Extent that Mr. Hill Is Not Competent to Testify to Matters of which He Lacks Personal Knowledge.

As SBC argued in its Renewed Motion to Strike, evidence of negotiations as to which the witness does not have first-hand knowledge must be stricken.⁵ On its face, the Hill Affidavit demonstrates that Mr. Hill lacks personal knowledge of much of its

⁴ SBC's Renewed Motion to Strike at 3. UCS does not share this view, but what is sauce for the goose is sauce for the gander.

⁵ SBC's Renewed Motion to Strike at 5-6. UCS does not share this view, but what is sauce for the goose is sauce for the gander.

substance. In ¶ 2, Mr. Hill explains that prior to his October 2003 involvement in the negotiations, Mary Pat Regan and Lee Sheehan were involved in the negotiations and Mr. Hill learned about those negotiations via “numerous discussions” with Ms. Regan and Mr. Sheehan. In ¶ 3, Mr. Hill then goes on to describe in detail what Ms. Regan and Mr. Sheehan told UCS. This is clearly hearsay, and under the approach to admissibility advocated by SBC in its Renewed Motion to Strike, must be stricken.

3. Paragraphs 3-8 of the Hill Affidavit Should Be Stricken Because they Reflect Settlement Discussions.

As SBC argued in its Renewed Motion to Strike, filed February 10, 2004, evidence of “positions and arguments the parties allegedly made in . . .negotiation settlement discussions” is inadmissible.⁶ Paragraphs 3-6 and 8 of the Hill Affidavit consist almost entirely of “positions and arguments the parties allegedly made in negotiation settlement discussions” and should therefore be stricken.

B. Even if the Hill Affidavit is Considered, SBC’s 15 New Issues and the Accompanying Testimony Should be Stricken.

Even if the Commission were to consider the Hill Affidavit, it fails to establish that SBC raised its 15 Issues prior to the filing of the Petition. The only specific action SBC claims to have taken prior to the filing of the Petition was to inform UCS of the existence of its “generic resale agreement and appendices.” (SBC Resp. at 5.) SBC did not, and does not claim to have informed UCS at any time prior to the filing of the Petition that it wanted to include the language in Issues 2-15⁷ in the interconnection

⁶ See n.4 *supra*.

⁷ SBC makes a slightly different argument with respect to SBC’s Issue 1. SBC claims that this issue is necessary to address the fact that certain language in the redline accompanying UCS’ petition had never been unconditionally agreed to by SBC. If so, this is not a new “issue;” it is merely SBC’s position concerning UCS’ issue.

agreement. In fact, none of that language appeared in any of the redlines circulated by SBC (or by UCS) during the negotiation period.⁸ The statement “UCS did not object to this language during negotiations” (SBC Resp. at 5) is highly misleading. Of course UCS did not object; SBC never proposed to include the language in the agreement. The statement that “UCS failed to reflect SBC Illinois proposed language either as disputed or undisputed in the redline contract filed with its Petition,” is even more outrageous, since the language had never been “proposed” by SBC. Merely informing UCS that SBC has a “generic resale tariff” does not constitute “proposing” that each and every clause in, and attachment to, that “generic” tariff be included in UCS’ agreement. SBC simply never raised these issues during negotiations, and therefore, they must be stricken as Response Issues and stricken from SBC’s testimony.

V. The Commission Should Strike SBC’s Testimony Regarding The Negotiations, If It Strikes UCS’ Testimony On The Same Matters.

UCS argued that SBC’s testimony regarding negotiations should be stricken for the same two reasons advanced by SBC in its motion to strike UCS’ testimony: (1) because the testimony is hearsay and (2) because it discloses settlement negotiations.⁹ SBC offers no response to UCS’ demonstration that the hearsay objection is even more applicable to the testimony of SBC witness Smith, who by his own admission, did not participate in much of the negotiations, than it is to SBC witness Foster, who participated in the vast majority of the negotiations. SBC also agrees with UCS’ assertion that to the

⁸ SBC’s Mary Pat Regan sent a Resale Agreement to Craig Foster on July 18, 2003. SBC sent subsequent versions of the GTCs on September 12, 2003, October 20, 2003 (and Appendix Resale), November 7, 2003 and November 10, 2003. These proposals are attached as Exhibit A hereto. None contained any of the language that SBC now claims it “raised” during pre-petition negotiations.

⁹ As stated in UCS’ opening brief on this motion, it is UCS’ position that the testimony offered by UCS should not be stricken. UCS conditionally moves to strike SBC’s testimony only to the extent that UCS’ testimony is stricken.

extent that SBC's motion to strike UCS testimony on the ground that it discloses "settlement negotiations" is granted, it is appropriate for SBC's testimony regarding the same matters to be stricken.

SBC does offer two bases why SBC's motion should, at least in part, not be granted. First, SBC contends that UCS has not identified all of SBC's testimony that should be stricken in the event the motion is granted. To address this contention, UCS has listed in Exhibit B hereto the lines of SBC witness Smith's testimony that it conditionally moves to strike on these grounds, in addition to the lines listed in footnote 25 of UCS' opening brief.

Second, SBC argues that its testimony does not concern "settlement negotiations," but rather "contains nothing more than statements regarding the parties' respective positions." This argument seeks to draw a completely unsupportable distinction between the SBC testimony that UCS moves to strike and the UCS testimony that SBC moves to strike. For example, consider the following excerpt (lines 787-800) of the testimony of SBS witness Smith, which clearly describes the give-and-take of negotiations on a particular issue:

As an incentive for UCS to reach a negotiated agreement with SBC Illinois and to avoid arbitration, SBC Illinois had offered UCS the opportunity to order CompleteLink with terms and conditions more favorable than those provided in the tariff (*see* UCS Petition, fn. 42 at page 25, citing Section 2 of Appendix Resale). Specifically, SBC Illinois had offered that in a negotiated agreement (but not through arbitration) it would provision CompleteLink to (1) remove the MAD; (2) remove limitations on business locations and end user aggregation; (3) allow UCS to enter into multiple CompleteLink agreements; and (4) provide an additional discount. . . . However, because UCS filed for arbitration, SBC has withdrawn Section 2 of Appendix Resale.

Compare the foregoing with the following excerpts of UCS testimony that SBC moves to strike:

SBC has actually already agreed to apply this “hierarchy of conflict” with respect to one form of Service Agreements—the CompleteLink agreement. In Section 2.3 of the Appendix Resale, an agreed upon provision, SBC agreed to the following treatment of a conflict between the terms of the Appendix Resale and the terms of the Resale Tariff and a CompleteLink Agreement: “in the event of any conflict or inconsistency between the terms and conditions of this Appendix Resale and the terms and conditions of the Resale Tariff and/or a CompleteLink Agreement, the Parties agree that the terms and conditions of this Appendix Resale shall control and that such CompleteLink Agreement (and CompleteLink Plan) will be interpreted to the maximum extent permissible so as to effect the intent of the Parties as set forth in this Appendix Resale.”

A comparison of the two excerpts shows that while SBC is disclosing the give-and-take of negotiations, UCS is merely relating an agreement between the parties that is reflected in agreed language filed as an exhibit.

Similarly, while SBC has moved to strike several excerpts of UCS’ testimony that merely stated that SBC had not responded with a position on a particular UCS proposal,¹⁰ SBC’s testimony is larded with numerous instances of virtually the same language concerning UCS’ alleged failure to respond with a position on an SBC proposal.¹¹

It is UCS’ position that it is impossible to distinguish between the testimony of the parties that are the subject to the motions to strike on the basis that one party’s testimony impermissibly discusses “settlement negotiations,” while the others merely states “the parties’ respective positions.” Either neither should be stricken on these grounds (UCS’ preference) or neither should be stricken on these grounds. With respect to the hearsay issue, however, there is far more of a basis to strike the testimony of SBC witness Smith, whose participation in the negotiations was minimal, at best, than the testimony of UCS witness Foster, who participated pervasively in the negotiations.

¹⁰ *E.g.*, page 163, lines 3-4 (“In follow-up discussions, SBC has not provided a substantive response on this issue, only that it was still reviewing the provision”).

¹¹ *E.g.* Smith testimony, lines 2101-03 (“UCS’s position is unknown as, for whatever reason, it has not responded to [SBC’s proposal] despite a commitment to do so”); 2179-80; 2239-41; 2262-64; 2279-80.

CONCLUSION

For the reasons stated above, as well as for the reasons stated in UCS' opening brief, the SBC issues and testimony reflected in these briefs should be stricken.

Respectfully submitted,

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Dated: March 22, 2004

Exhibit A

**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

CLEC

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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, [REDACTED] ("CLEC"), (a [REDACTED] 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 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 which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

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 throughout 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.
- 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 thirteen 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; use of the term "Party" includes each of the SBC-owned ILEC(s) that is a party to this Agreement. "**Parties**" means both CLEC and the SBC-owned ILEC; use of the term "Parties" includes 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 "**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.
- 1.1.21 "**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.
- 1.1.22 "**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.
- 1.1.23 "**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.
- 1.1.24 "**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.
- 1.1.25 "**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.
- 1.1.26 "**Third Party**" means any Person other than a Party.

2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

2.1 Definitions

- 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.

2.2 Tariff References

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

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 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement as a total arrangement and it is intended to be nonseverable.

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 service to End Users identified to be residing in such ILEC Territory; and

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").

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 This Agreement sets forth the terms and conditions pursuant to which **SBC-4STATE** agrees to provide CLEC with Resale Services in **SBC-4STATE**'s incumbent local exchange areas for the provision of

CLEC's Telecommunications Services (Act, Section 251(c)). The Parties acknowledge and agree that **SBC-4STATE** is only obligated to make available Resale Services to CLEC in **SBC-4STATE**'s incumbent local exchange areas. **SBC-4STATE** has no obligation to provide Resale Services to CLEC for the purposes of CLEC providing and/or extending service outside of **SBC-4STATE**'s incumbent local exchange areas. In addition, **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. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Resale Agreement, shall only apply and be available to CLEC for purchasing services within an **SBC-4STATE** incumbent local exchange area(s) in the State in which the CLEC's Resale Agreement has been approved by the Commission and is in effect.

3. GENERAL RESPONSIBILITIES OF THE PARTIES

3.1 Resale Services

3.1.1 **SBC-4STATE** will provide CLEC with Resale Services pursuant to the provisions of the Act. CLEC may purchase Resale Services that **SBC-4STATE** currently provides or hereafter provides at retail to subscribers who are not telecommunications carriers will be made available for resale to CLEC by **SBC-4STATE** in accordance with the terms and conditions set forth in this Agreement and the appropriate state Resale Tariff. **SBC-4STATE** shall make its services available for resale to CLEC on terms and conditions that are reasonable and nondiscriminatory. **SBC-4STATE** will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its services.

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 or a Referenced Instrument.
- 3.3 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert the appropriate it's 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; 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 5, 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 3.5, 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 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.
- 3.4.5 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 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.

4. EFFECTIVE DATE, TERM, AND TERMINATION

- 4.1 In SBC-4STATE 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.
- 4.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on ~~date = 1yr 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 4.3 or 4.4.
- 4.3 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 4.3 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.
- 4.4 If pursuant to Section 4.2, 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 4.5 and 4.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.4 other than its obligations under Sections 4.5 and 4.6.
- 4.5 Upon termination or expiration of this Agreement in accordance with Sections 4.2, 4.3, or 4.4:
- 4.5.1 Each Party shall continue to comply with its obligations set forth in Section 12 and 25;
- 4.5.2 Each Party shall promptly pay all amounts owed under this Agreement;
- 4.5.3 Each Party's confidentiality obligations shall survive; and
- 4.5.4 Each Party's indemnification obligations shall survive.
- 4.6 If either Party serves notice of expiration 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 terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) 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.
- 4.7 If written notice is not issued pursuant to Section 5.2, 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; or (ii) the date that is ten (10) months after the date on which SBC-4STATE received CLEC's Section 252(a)(1) request.
- 4.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, 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. 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 of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If the

Term of this Agreement has expired, on 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 or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 5.5 of this Agreement.

- 4.9 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 required after receipt of the SBC-owned ILEC's notice of expiration or termination, 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 of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 4.5 of this Agreement.
- 4.10 In the event of termination of this Agreement pursuant to Section 4.9, **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.

5. END USER FRAUD

- 5.1 **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**). 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.
- 5.2 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.
- 5.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 5.2 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.
- 5.4 **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.
- 5.4.2 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.
- 5.4.3 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.
- 5.4.4 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. DISPUTE RESOLUTION

6.1 Finality of Disputes

6.1.1 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.

6.1.2 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.

6.2 Alternative to Litigation

6.2.1 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.

6.3 Commencing Dispute Resolution

6.3.1 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:

6.3.1.1 Service Center (SBC-4STATE)

6.3.1.2 Informal Dispute Resolution; and

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

6.4 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".

6.4.1 If the written notice given pursuant to Section 6.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 6.4 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 and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. Failure to provide the information and evidence required by this Section 6.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.

6.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on SBC-4STATE's current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 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.

6.4.3 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 6.4.1), SBC-4STATE will notify CLEC of the status of the dispute and the expected resolution date.

- 6.4.4 Any notice of Disputed Amounts given by **SBC-4STATE** to CLEC pursuant to Section 6.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **SBC-4STATE** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **SBC-4STATE** furnishes all requisite information by the Bill Due Date) and 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, CLEC will notify **SBC-4STATE** of the status of the dispute and the expected resolution date.
- 6.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 6.4, 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 6.5 of this Agreement.

6.5 Informal Resolution of Disputes

- 6.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 6.3 or Section 6.4.5, 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.

6.6 Formal Dispute Resolution

- 6.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 6.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 6.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 6.3.
- 6.6.2 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:
- 6.6.2.1 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 6.3. 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 6.3, the Parties will annualize the actual number of months billed.
- 6.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 6.7 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.
- 6.6.4 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.

- 6.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.
- 6.6.4.2 Actions to compel compliance with the Dispute Resolution process.
- 6.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

6.7 Arbitration

6.7.1 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 sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, 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.

7. AUDITS

7.1 Subject to the restrictions set forth in Section 12 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.

7.1.1 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.

- 7.1.2 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.
- 7.1.3 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 information that reveals the identity of End Users of Audited Party.
- 7.1.4 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.
- 7.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (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.
- 7.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 7.1.7 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 7.1. Any additional audit shall be at the requesting Party's expense.

8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 8.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS 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.

9. NOTICES

9.1 Subject to Section 9.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

9.1.1 delivered personally;

9.1.2 delivered by express overnight delivery service;

9.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

9.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in sections 9.1.1, 9.1.2, or 9.1.3.

9.1.5 Notices will be deemed given as of the earliest of:

9.1.5.1 the date of actual receipt,

9.1.5.2 the next Business Day when sent via express overnight delivery service,

9.1.5.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or

9.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

9.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT	SBC-4STATE CONTACT
NAME/TITLE		Contract Management ATTN: Notices Manager
STREET ADDRESS		311 S. Akard, 9 th Floor Four SBC Plaza
CITY, STATE, ZIP CODE		Dallas, TX 75202-5398
FACSIMILE NUMBER		214-464-2006

9.1.7 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

10. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

10.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

10.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any

advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

11. NO LICENSE

11.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

12. CONFIDENTIALITY

12.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.

12.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:

12.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or

12.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

12.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or

12.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

12.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or

12.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or

12.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

13. INTERVENING LAW

13.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate State Commission(s). In entering into this Agreement, the Parties acknowledge and agree that on May 24, 2002, the D.C. Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA decision"), in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. Dec. 9, 1999) ("the Line Sharing Order"), and vacated and remanded the Line Sharing and UNE Remand Orders in accordance with the decision. In addition, the FCC adopted its Triennial Review Order on February 20, 2003, on remand from the USTA decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001). Moreover, on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court,

Verizon v. FCC, et. al, 535 U.S. 467 (2002). In addition, on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001) (the "ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (all collectively referred to as the "Orders"). On May 9, 2003, the Public Utilities Act of Illinois was amended to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law"). The Illinois Law establishes a specific method for setting certain UNE rates in Illinois, mandates that the Illinois Commerce Commission ("ICC") apply the method and determine the rates ("ICC Rates"), and expressly deems all interconnection agreements to be amended to contain the ICC Rates immediately upon the ICC's announcement of such adjusted rates, without further action. In entering into this Agreement, the Parties acknowledge and agree that the provisions set forth in this Agreement are based upon SBC-4STATE's obligations under FCC rules and regulations as they existed prior to their vacatur by the D.C. Circuit in its USTA Decision and prior to the ICC's promulgation of rates, terms and conditions pursuant to the Illinois Law. By executing this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to the Orders, the Illinois Law and any other federal or state regulatory, legislative or judicial action(s), including but not limited to any legal or equitable rights of review and remedies (including agency reconsideration and court review), and its rights under this Intervening Law paragraph. Notwithstanding anything to the contrary in this Agreement, these rights also include but are not limited to SBC-4STATE's right, to the extent SBC-4STATE has not already invoked the FCC ISP terminating compensation in a particular SBC-4STATE state in which this Agreement is effective and incorporated the rates, terms and conditions of such plan into this Agreement, to exercise its option at any time to adopt on a date specified by SBC-4STATE the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Orders, the affected provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). In addition, to the extent this Agreement is in effect in Illinois, the Parties agree that any ICC orders implementing the Illinois Law, including, without limitation, the ICC Rates, shall automatically apply to this Agreement (for the state of Illinois only) as of the effective date of any such order(s) upon Written Notice, and as soon as practical thereafter, SBC Illinois shall begin billing CLEC the ICC Rates; provided, however, the Parties acknowledge and agree that no later than sixty (60) days from the Written Notice, the Parties will execute a conforming Amendment to this Agreement so that the Agreement accurately reflects the ICC Rates and SBC Illinois will issue any adjustments, as needed, to reflect that the ICC Rates became effective between the Parties as of the effective date of the applicable ICC order(s). With respect to all other Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

14. GOVERNING LAW

- 14.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Resale Services, functions, facilities, products and services at

issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in ; Chicago, Illinois; Indianapolis, Indiana; Detroit, Michigan; and Milwaukee, Wisconsin, and waive any and all objection to any such venue.

15. REGULATORY APPROVAL

15.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

16. COMPLIANCE AND CERTIFICATION

- 16.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 16.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Resale Services, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 16.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 16.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

17. LAW ENFORCEMENT

- 17.1 Each Party shall reasonably cooperate with the other Party in handling law enforcement requests as follows:
- 17.1.1 Intercept Devices:
- 17.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.
- 17.1.2 Subpoenas:
- 17.1.2.1 If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, in which case that Party will respond to any valid request.
- 17.1.3 Emergencies:
- 17.1.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that Receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or

Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims or Losses.

18. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

- 18.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.
- 18.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

19. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

- 19.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

20. SUBCONTRACTING

- 20.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 20.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 20.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 20.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Resale Services, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 20.5 Any subcontractor that gains access to Customer Proprietary Network Information ("CPNI") or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

21. FORCE MAJEURE

21.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

22. TAXES

- 22.1 Each Party purchasing Resale Services, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Resale Services, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 22.2 CLEC acknowledges and agrees that it is required to comply with Chapter 283 of the Texas Local Government Code, as it may be amended from time to time, and the reporting and compensation requirements of Subchapter R of the P.U.C. Substantive Rules - Chapter 26, Applicable to Telecommunications Service Providers, as they may be amended from time to time. With respect to municipal fees charged pursuant to Chapter 283, Tex. Loc. Gov't Code, CLEC agrees that it will directly report its access lines to the Texas Public Utility Commission, will remit the related payments to municipalities, and will otherwise comply with Chapter 283 and applicable P.U.C rules, as they may be amended from time to time.
- 22.3 With respect to any purchase of Resale Services, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 22.4 With respect to any purchase hereunder of Resale Services, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to

impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.

- 22.5 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 22.6 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 22.7 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 22.8 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Resale Services, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 22.9 With respect to any Tax or Tax controversy covered by this Section 22, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 22.10 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 22 shall be sent in accordance with Section 9 hereof.

23. NON-WAIVER

- 23.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

24. CONFLICT OF INTEREST

24.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

25. SURVIVAL

25.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 5.5; Section 5.6, Section 6, Section 7; Section 10; Section 11; Section 12; Section 14; Section 16.4; Section 17.1.3; Section 21; Section 22; Section 23; and Section 26.1.3.

26. SCOPE OF AGREEMENT

26.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.

26.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

27. AMENDMENTS AND MODIFICATIONS

27.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions. **SBC-4STATE** and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

27.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

28. AUTHORITY

28.1 Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for that SBC-owned ILEC. Each of the SBC-owned

ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

28.2 CLEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of [REDACTED] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

28.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

29. COUNTERPARTS

29.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

30. ENTIRE AGREEMENT

30.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

SBC-4STATE Agreement

APPENDIX
RESALE

- Deleted: ¶
- Deleted: SBC Resp 8-1-03
- Deleted: UCS Draft 9 23 03
- Inserted: SBC Resp 8-1-03
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- Deleted: ¶

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Deleted: SBC Resp 8-1-03
Deleted: UCS Draft 9 23 03
Inserted: SBC Resp 8-1-03
Inserted: UCS Draft 9 23 03

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Deleted: ¶
Deleted: SBC Resp 8-1-03
Deleted: UCS Draft 9 23 03
Inserted: SBC Resp 8-1-03
Inserted: UCS Draft 9 23 03

APPENDIX RESALE

1. INTRODUCTION

1.1 This Appendix Resale is incorporated and made a part of the "Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996" between **SBC-14STATE** and United Communications Systems, Inc. dated as of [date] (the "Agreement"). Unless otherwise defined herein, capitalized terms in this Appendix Resale shall have the meanings assigned to such terms in this Agreement.

1.2 Except as otherwise provided herein, all rates, terms and conditions for the Resale Services are governed by the respective **SBC-4STATE** "Resale Tariff". As used in this Appendix Resale, "Resale Tariff" means (i) the **SBC-4STATE** tariff then in effect that governs **SBC-4STATE's** resale of Resale Services in a specific state covered by the terms of the Agreement, and (ii) any notifications, accessible letters or advices distributed by **SBC-4STATE** regarding [SBC: We don't believe this change should be made because it properly captures changes to tariff as well as letters, notices, etc.] any additional Telecommunications Services or promotional offerings that **SBC-4STATE** is required to make available to CLEC for resale As Described in the Act. [SBC: This provision should remain. It is not duplicative of later sections, is general in scope, and the general statement is good to have up front to frame the scope of the appendix for the reader.] [SBC: Agree that the following sentence can be deleted:] [SBC: We are missing a concept here that was in a prior draft, namely, that SBC can withdraw the arrangement if a state commission changes avoided cost or resale rates. The resale obligation is to offer for resale telecom services that are offered at retail. It does not encompass locking in an arrangement for resale when such feature does not exist at retail.]

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Deleted: This Appendix Resale is intended by the parties to permit CLEC to have more than the number of business customers and locations permitted under the Ameritech CompleteLink Service tariffs (as defined and cited herein), and to be eligible for Additional Discounts (as defined herein and provided for herein) when CLEC's MAR exceeds the highest revenue/purchase level (tier) on which a MARC discount is provided, and not to otherwise modify or qualify the operation of Ameritech CompleteLink Service tariffs. This Appendix Resale shall be construed and applied accordingly.
Inserted: This Appendix Resale is intended by the parties to permit CLEC to have more than the number of business customers and locations permitted under the Ameritech CompleteLink Service tariffs (as defined and cited herein), and to be eligible for Additional Discounts (as defined herein and provided for herein) when CLEC's MAR exceeds the highest revenue/purchase level (tier) on which a MARC discount is provided, and not to otherwise modify or qualify the operation of Ameritech CompleteLink Service tariffs. This Appendix Resale shall be construed and applied accordingly.
Deleted: 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.
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2. COMPLETELINK TERMS AND CONDITIONS

2.1 Subject to the provisions of Sections 2.2 and 2.3, **SBC-4STATE** will make Ameritech CompleteLink Service available to CLEC at the rates, terms and conditions as provided within the respective state-specific Resale Tariff in effect on the date a given CompleteLink Agreement (as defined hereafter) is executed [SBC: Reject. As stated above, this is not a resale requirement. Resale requirement is to mirror retail, not to allow CLECs to lock in when that does not exist on the retail side]. As used in this Appendix Resale, "Ameritech CompleteLink Service" means [Note to SBC: Given that all CompleteLink products will be available for aggregation, UCS thought it easier to adopt a more

general definition vs. listing all the tariff references. If SBC wants, we can cite to each of the products in each of the states and then add a catch-all to incorporate new CompleteLink promotions or products offered after the effective date.] [SBC: We'd like to better understand what you're after here. Our resale offers are contained in the listed sections. Why do you need a catchall? Is UCS trying to cover ICBs in this catchall?] any and all access and usage volume discount plans and promotions offered to business customers during the Term by or through SBC under or in association with the "CompleteLink" product name and any successor product name that replaces the "CompleteLink" family of products.

2.2 [SBC: We would like to discuss this lead-in paragraph as, frankly, it is somewhat confusing. Does UCS mean to say that it gets the following terms no matter what happens to the underlying tariff? What if there is a ruling that forces a change to the underlying CompleteLink offering? Are you saying we'd have to disregard the ruling and keep offering UCS these terms?] Notwithstanding anything to the contrary in Section 2.1, a Resale Tariff and/or a separate agreement between CLEC and one or more of the SBC-4STATE entities relating to SBC-4STATE's provision to CLEC of Ameritech CompleteLink Service (a "CompleteLink Agreement") executed prior to or subsequent to the Effective Date, SBC-4STATE's provision to CLEC of Ameritech CompleteLink Service shall be subject to the following rights, terms and conditions:

- 2.2.1 CLEC may subscribe to multiple Ameritech CompleteLink Service offerings and enter into multiple CompleteLink Agreements; provided no CLEC customer account [SBC: Let's discuss. Is UCS saying that a customer may have separate accounts on different contracts?] may be on multiple CompleteLink Agreements;
- 2.2.2 To satisfy its MARC (as applicable in a CompleteLink Agreement) CLEC may include and aggregate under any CompleteLink Plan [SBC: What is the difference between a CompleteLink Plan and a CompleteLink Agreement?] (as such term is used in a CompleteLink Agreement) any number of its business customers or locations within the ILEC Territory irrespective of any limitations on the number of business customers or locations that are contained in a Resale Tariff or CompleteLink Agreement;
- 2.2.3 CLEC may from time to time after the effective date of a CompleteLink Agreement add new business customers, locations and/or Account Telephone Numbers (ATN) ("Additional Accounts") to a [SBC: Same question as immediately above for the remainder of this section 2.2.3] CompleteLink Plan, and such Additional Accounts shall prospectively only, beginning as of the date such Additional

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Inserted: the services offered in the following tariffs and their cited pages, as may be modified from time to time: in Illinois, ILL CC No. 20, Part 22, Section 23, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised Sheet No. 49 through Original sheet No. 58); in Indiana, Catalog, Part 22, Section 3, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised sheet No. 26 through Original sheet No. 34); in Michigan, Tariff MPSC No. 20R, Part 22, Section 3, "AMERITECH COMPLETELINK" (found as of the negotiation of this Appendix Resale at 2nd Revised Sheet No. 29 through Original sheet No. 39); and in Wisconsin, PSC of W. 20, Part 22, Section 3, "AMERITECH COMPLETELINK" (found as of t ... [1]

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Accounts are processed (1) contribute to CLEC's satisfaction of CLEC's MARC and MATUC (as defined in the CompleteLink Plan) and (2) be entitled to the usage rates set forth in the applicable CompleteLink Plan and included in the calculation of the Additional Discount defined in Section 2.2.5 below;

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

2.2.5 If CLEC commits under a CompleteLink Agreement to the highest prescribed "Minimum Annual Revenue Commitment" (MARC) associated with an Ameritech CompleteLink Service and exceeds that MARC, CLEC will be entitled to an additional discount [SBC: "on the excess only" needs to stay in. The additional discount only applies to the overage, not to the entire amount] (the "Additional Discount") (1) based on the amount CLEC's Eligible [SBC: What is the difference again between these two?] Services (as defined in the [SBC: "then-applicable" needs to stay and thus "in effect as of..." should be deleted.] Resale Tariff in effect as of the date such CompleteLink Agreement is executed) exceeds the highest prescribed MARC associated with such Ameritech CompleteLink Service, (2) at a percentage equal to CLEC's Maximum Annual Discount divided by CLEC's MARC that is associated with such Maximum Annual MARC Discount (currently reflected in Attachment A to the applicable CompleteLink Agreement) and (3) irrespective of any "Maximum Annual MARC Discount" (as defined in the CompleteLink Agreement) (or its state-specific equivalent) limitation.

2.2.5.1 [SBC: Provision should go back to original language. We will do this on a quarterly, not monthly, basis.] The Parties agree to cooperate to implement a solution such that the Additional Discount may be applied to

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~~CLEC on a monthly basis on CLEC's standard CompleteLink billing account. In advance of that solution, the Additional Discount shall be calculated manually by SBC-4STATE on a calendar quarterly basis, with the first calculation to be the first calendar quarter after the effective date of a CompleteLink Agreement;~~

2.2.5.2 CLEC understands and acknowledges that for so long as the Additional Discount is manually calculated and applied via a manual billing adjustment ~~[placeholder for PM exclusion language].~~ [SBC: Okay.]

2.2.5.3 For so long as the Additional Discount is calculated and applied on a manual basis, the Additional Discount will be applied as a credit to CLEC's CompleteLink billing account number no later than the second billing cycle that immediately follows the calendar quarterly calculation date. Notwithstanding the foregoing and without affecting Section 2.4 [SBC: Check reference at end of negotiations.] of this Appendix Resale, SBC-4STATE reserves the right to apply the Additional Discount to any past due amounts that are not subject to a good faith dispute initiated and pursued consistent with the terms of this Agreement.

2.3 [SBC: This needs to stay in as it is not duplicative of 2.2.5 but clarifies it.]

4. Except as provided in this Agreement, all other terms and conditions of each applicable Resale Tariff and CompleteLink Agreement shall apply to SBC-4STATE's provision of Ameritech CompleteLink Service to CLEC; provided, however, in the event of any conflict or inconsistency between the terms and conditions of this Appendix Resale and the terms and conditions of the Resale Tariff and/or a CompleteLink Agreement, the Parties agree that [SBC: This clause is confusing in either location. This agreement should control without reference to another document. If the parties want to change this agreement, it should be done overtly with an amendment.] unless the Parties enter into a separate written agreement that expressly specifies a conclusion to the contrary, the terms and conditions of this Appendix Resale shall control and that such CompleteLink Agreement (and Ameritech CompleteLink Service plan) will be

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interpreted to the maximum extent permissible so as to effect the intent of the Parties as set forth in this Appendix Resale.

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

2.6 [Add CLEC's right to those Performance Credits or Recourse Credits available in each of the states to competitive local exchange carriers and/or resellers] [SBC: Why is this here instead of the GTCs? Should not be in both places.]

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2.7 [SBC: Reject. This was never part of the business deal.] This Section 2 of this Appendix Resale is the Parties' application of SBC-4STATE's obligations under Section 251(c)(4) of the Act to make available to CLEC Ameritech CompleteLink Service, a volume and term offering, for resale by CLEC to its end user customers. If CLEC wishes to purchase for resale an SBC volume and term offering other than an Ameritech CompleteLink Service, including any new volume and/or term offerings introduced by SBC after the Effective Date, the Parties agree to apply principles similar to those set forth in this Section 2 and As Described in the Act and amend the Agreement and/or this Appendix Resale to incorporate appropriate terms and conditions to make such additional offerings available to CLEC. The absence of an executed amendment shall not preclude CLEC from ordering and SBC-4STATE provisioning any new volume and/or term offering in a manner consistent with the terms of this Appendix Resale and the Agreement.

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3 ICBs [SBC: As we discussed, this section needs to come out of the appendix.]

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3.1 SBC-4STATE will provide notice of and make available for resale by CLEC ICBs at the rates, terms and conditions set forth in this Section 3. As used in this Appendix Resale, an "Individual Case Basis contract" or "ICB" is a specific contract between SBC-4STATE and one of its end user customers under which SBC-4STATE provides Telecommunications Services to such end user customer at a rate and/or on terms and conditions that differ from the applicable SBC-4STATE's retail tariff.

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3.2 Within ten (10) business days of entering into an ICB, SBC-4STATE shall provide CLEC notice of such ICB by providing CLEC a copy of the specific contract underlying the ICB with only the end user customer identifying information redacted. Failure by SBC-4STATE to provide CLEC timely notice of an ICB will be considered a material default of the terms of this Section 3.2 and without limiting any of CLEC's other rights and remedies will, if an untimely

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notified ICB offers a lower rate or more attractive terms and conditions, allow CLEC to obtain a credit consistent with the provisions of such ICB back to the date such ICB would have been first available for resale.

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3.3 Provided that CLEC may satisfy an ICB with respect to volume commitment (through an individual end user's volume or aggregated end users), termination liability and contract term, CLEC may offer to its qualifying end user customers the Telecommunications Services subject to an ICB at the rates and on the terms and conditions contained in such ICB less the ICB Wholesale Discount. As used herein, the "ICB Wholesale Discount" means the single wholesale discount rate determined by a Commission that applies to ICBs in a given state, which discount is based on the costs SBC-4STATE avoids by offering ICBs at wholesale.

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3.3.1 The Parties acknowledge that the Commissions having jurisdiction in the ILEC Territories subject to this Agreement have not reviewed and/or determined the specific issue of SBC-4STATE's avoidable costs when making available ICBs for resale at wholesale. The Parties' intent is to have each Commission commence after the Effective Date an appropriate proceeding to determine the ICB Wholesale Discount. In advance of each Commission's determination of the appropriate ICB Wholesale Discount, the Parties have adopted the below interim discounts to apply to ICBs that are resold by CLEC in a given state:

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State	Interim ICB Wholesale Discount Rate
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Illinois	
Indiana	
Michigan	
Wisconsin	

Within thirty (30) days of a Commission's determination of the ICB Wholesale Discount SBC-4STATE will issue an adjustment, as needed, to CLEC's bill to reflect as if the ICB Wholesale Discount was in effect retroactive to the Effective Date.

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3.4 SBC-4STATE's provision to CLEC of ICBs shall be subject to the following terms and conditions:

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3.4.1 CLEC may resell ICBs to qualifying end user customers other than the specific end user customer that purchased such ICB from SBC-4STATE;

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3.4.2 To satisfy a volume commitment under a given ICB CLEC may include and aggregate under such ICB any number of its business customers or locations within the ILEC Territory irrespective of any limitations on the number of business customers or locations that are contained in the ICB;

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3.4.3 CLEC may from time to time after it resells an ICB add new qualifying end user customers, locations and/or Account Telephone Numbers (ATN) ("Additional ICB Accounts") to an ICB, and such Additional ICB

Accounts shall prospectively only, beginning as of the date such Additional ICB Accounts are processed (1) contribute to CLEC's satisfaction of the ICBs' volume requirements and (2) be entitled to the usage rates and/or billing terms and conditions set forth in the applicable ICB;

3.4.4 CLEC may from time to time after it resells an ICB remove an Account Telephone Number ("~~Removed ICB Accounts~~") from an ICB, and such Removed ICB Accounts shall prospectively only, beginning as of the date such Removed ICB Accounts are processed (1) no longer contribute to CLEC's satisfaction of the ICB's volume commitment and (2) not be entitled to the usage rates and/or billing terms and conditions set forth in the applicable ICB;

3.4.5 If included in an ICB, no maximum annual discount or other limitation on the applicability of rates and/or a discount over a threshold volume and/or billed amount shall apply to CLEC's resale of such ICB to its end user customer(s).

RESERVATION OF RIGHTS, MISCELLANEOUS

4.1 [SBC: This is consistent with the ROR language that appears in practically every ICA with practically every CLEC. Keep in with changes.]

The Parties acknowledge that (i) the entirety of this Appendix Resale and its provisions are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code (even if Section 252(i) does not apply to this Agreement or Appendix Resale), and (ii) as to this Appendix Resale and its provisions and the CompleteLink tariffs set forth in Section 2.1 of this Appendix Resale, they are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code (even if Section 252(i) does not apply to this Agreement or Appendix Resale). [SBC: Keep in. We cannot have portions of this deal ported to other agreements and states. If that happens, we will endeavor to enter into another arrangement with UCS in a way that allows us to keep the legitimately related terms together. This is a very unlikely scenario, but the extreme unlikelihood is severe enough to SBC as to warrant an extreme remedy. If this concept is picked up in the GTCs, we are okay removing it here.] [SBC: Because we'd like 3.1.1 back in, reinsert section 3.2.1 here.]

4.2 Severability. [SBC: The parties need to discuss the concept of severability. Frankly, I don't know where Ron Lambert and Mark Ortlieb left off on this. We have no problem negotiating if some language is removed by a governmental authority. But our meeting of the minds is, I believe, no severability. So it makes little sense to say we'd submit the matter to an arbitrator who has the right to settle on something

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Inserted: are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). In the event (1) any of the terms and conditions in this Agree... [4]

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less than what one or both of the parties believes is all the necessary terms. As SBC has stated throughout negotiations, this is a unique deal and all the relevant terms and conditions are nonseverable. We can't agree to a dispute resolution procedure that would, in all likelihood, leave us with less than that.] The Parties negotiated the terms and conditions of this Agreement as a total arrangement and it is intended to be nonseverable. 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 based on any ruling it is necessary for the Parties to amend this Agreement to replace the unenforceable language with enforceable language, the Parties shall negotiate in good faith replacement language that reflects the original intent of the Parties as closely as possible. If the Parties are unable to negotiate replacement language that is mutually satisfactory within fifteen business days, the Parties shall submit their dispute 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. The arbitration will be held in Chicago, Illinois unless the Parties agree otherwise. The arbitration hearing will be requested to commence within fifteen (15) calendar days of the demand for arbitration. Each Party will submit proposed replacement language and the arbitrator will be empowered to (i) choose either Party's proposed replacement language, (ii) fashion his/her own replacement language or (iii) determine that no replacement language addresses the original intent of the Parties' agreement and as a result, one or both of the Parties has not received and/or will not receive the benefit of the bargain of the Agreement as originally executed.

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4.2.1 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.

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If the arbitrator determines that no replacement language can reflect the Parties' original intent, then either Party may terminate the Agreement on thirty (30) business days prior written notice. In the event of termination pursuant to this Section 4.3 (i) CLEC may continue to provide service under existing Service Agreements for the term of such offerings to those end users that are, as of the effective date of termination of the Agreement, receiving service under such Service Agreements; and (ii) with respect to CLEC's provision of Resale Service to new end user customers after the effective date of termination of the Agreement, all Resale Services available to CLEC will (A) automatically revert to those Resale Services available in the respective state-specific Resale Tariff and (B) be subject to the terms and conditions set forth in the respective state-specific Resale Tariff. As used herein a "Service Agreement" is an agreement entered into by CLEC that requires CLEC to make a MARC or other financial commitment for a specific volume and/or minimum term. By way of example only, a CompleteLink Agreement and CLEC's purchase and resale of an ICB that requires a volume and/or term commitment would both be considered "Service Agreements".

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