

**APPENDIX  
INTERCARRIER COMPENSATION**

**(AFTER FCC ORDER NO. 01-131, AGREEING TO EXCHANGE ALL ISP-BOUND  
and SECTION 251(b)(5) TRAFFIC AT THE FCC RATES IN CERTAIN STATES,  
WHERE APPLICABLE)**

TABLE OF CONTENTS

1. SCOPE OF APPENDIX..... 3

2. RESERVED FOR FUTURE USE..... 3

3. CLASSIFICATION OF TRAFFIC ..... 3

4. RESPONSIBILITIES OF THE PARTIES..... 7

5. ***TRAFFIC TERMINATION RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(b)(5) TRAFFIC***..... 9

6. ***RESERVED FOR FUTURE USE RATES, TERMS AND CONDITIONS OF FCC’S INTERIM ISP TERMINATING COMPENSATION PLAN***..... 11

7. ***OTHER TELECOMMUNICATIONS TRAFFIC*** ..... 13

8. OPTIONAL CALLING AREA TRAFFIC – SBC ARKANSAS, SBC KANSAS, AND SBC TEXAS14

9. MCA TRAFFIC -- SBC MISSOURI..... 15

10. ***PRIMARY TOLL CARRIER ARRANGEMENTS***..... 15

11. INTRALATA 800 ***TELECOMMUNICATIONS*** TRAFFIC ..... 15

12. MEET POINT BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION ..... 16

13. ***RESERVED FOR FUTURE USE COMPENSATION FOR ORIGINATION AND TERMINATION OF INTERLATA TRAFFIC NOT SUBJECT TO MEET POINT BILLING***..... 17

14. INTRALATA TOLL TRAFFIC COMPENSATION..... 17

15. BILLING ARRANGEMENTS FOR TERMINATION OF ***CIRCUIT SWITCHED SECTION 251(b)(5)***, OPTIONAL EAS ISP-BOUND AND ***CIRCUIT SWITCHED*** INTRALATA TOLL TRAFFIC..... 17

16. ***RESERVED FOR FUTURE USE CIRCUIT SWITCHED TRAFFIC***..... 18

17. ***RESERVED FOR FUTURE USE IP TRAFFIC***..... 19

18. RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS ..... 19

19. ADDITIONAL TERMS AND CONDITIONS ..... 22

## APPENDIX INTERCARRIER COMPENSATION

### 1. SCOPE OF APPENDIX

- 1.1 This Appendix sets forth the terms and conditions for Intercarrier Compensation of intercarrier telecommunications traffic between the applicable SBC Communications, Inc. (SBC) owned Incumbent Local Exchange Carrier and CLEC.
- 1.2 The provisions of this Appendix apply to telecommunications traffic originated from a facilities based carrier and/or a carrier providing telecommunications services utilizing Lawful Unbundled Network Elements.
- 1.3 ***The provisions of this Appendix do not apply to traffic originated over services provided under local Resale service pursuant to 251(c)(4) of the Act. The provisions of this Appendix do not apply to traffic originated over services provided under local Resale service. SBC-13STATE will compensate the terminating carrier in accordance with this Appendix for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic that originates from an end user that is served by a carrier providing telecommunications services utilizing SBC-13STATE's Resale Service.***
- 1.4 ***The Parties agree that in light of their responsibilities as common carriers under, inter alia, 47 U.S.C. §§ 201, 202, 251, 252, and 271 and specifically in reference to 47 U.S.C. § 252(a) that the purpose of this Appendix as well as the purpose of this Agreement generally is to ensure that each Party exchanges all forms of traffic including all traffic described in Sections 3 below as well as any information services, CMRS, voice, video, text, or data traffic or any other electronic communications traffic over and between their respective facilities and networks. Reserved for future use.***
- 1.5 Any inconsistencies between the provisions of this Appendix and other provisions of the Agreement shall be governed by the provisions of this Appendix.

### 2. Reserved for Future Use.

### 3. CLASSIFICATION OF TRAFFIC

- 3.1 Telecommunications Traffic exchanged between CLEC and SBC-13STATE will be classified as either: Section 251(b)(5) Traffic, FX Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic"), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic.
- 3.1.1 ***Telephone Toll Service defined according to 47 U.S.C. §153(48);***
- 3.1.2 ***Telephone Exchange Service defined according to 47 U.S.C. §153(47);***
- 3.1.3 ***Exchange Access Service defined according to 47 U.S.C. §153(16); or***
- 3.1.4 ***Telecommunications Services defined according to 47 U.S.C. §153(46); and***
- 3.1.5 ***Information Services defined according to 47 U.S.C. §153(20).***
- 3.2 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:
- a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or

regulatory agency; or

- b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.

### 3.2 ***IP-ENABLED SERVICES TRAFFIC***

#### 3.2.1 ***Definition of IP-enabled Services***

3.2.1.1 ***IP-enabled Services are defined as, and include, services and applications relying on the Internet Protocol family (“IP”), which could include digital communications of increasingly higher speeds that rely upon IP, as well as higher level software services that could be invoked by the end user or on the end user’s behalf to make use of communications services. Thus, the term IP-enabled Services includes “applications” and “services” because communications over the Internet are possible with both forms.***

3.2.1.1.1 ***Because IP-enabled Services are enabled by use of IP and the Internet, IP-enabled Services share the non-geographic nature of electronic communications conducted over the Internet:***

3.2.1.1.1.1 ***IP-enabled Services Traffic includes communications traffic containing voice communications (i.e. Voice embedded IP Communications).***

3.2.1.2 ***The Parties recognize that although state public utility commissions may have jurisdiction over underlying telecommunications facilities, the FCC has determined that IP-enabled Services are interstate in nature and has preempted state jurisdiction over such services.***

3.2.1.3 ***In order for Parties communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over a legacy circuit switched telephone network.***

#### 3.2.2 ***Identification of IP-enabled Services Exchanged Between the Parties***

3.2.2.1 ***The parties recognize that neither party has a billing system capable of determining the physical location of their customers; rather consistent with industry practice nationwide both Parties’ billing systems capture the originating and terminating NPA-NXX, which they subsequently compare to tariff databases and the Local Exchange Routing Guide (“LERG”) to identify the location of the switch serving the called or calling NPA-NXX codes and then they rate those calls according to the terms and conditions***

*of this Agreement and their respective tariffs.*

- 3.2.2.2 *Because customers of IP-enabled Services Traffic desire to make calls to the PSTN as well as to other IP-enabled Services Traffic customers, Level 3 provides a service that permits them to make calls to and from devices that are addressed using NPA-NXX codes.*
- 3.2.2.3 *In order to ensure that IP-enabled Services Traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize Level 3's network for toll-bypass, Level 3 will insert into the SS7 call setup message an indicator identifying traffic that originates as IP on Level 3's network.*
- 3.2.2.4 *Level 3 recognizes that ILEC billing systems generally, and in this case, SBC13-State's switches may not capture information out of the SS7 stream at the moment the traffic is exchanged. Accordingly, the Parties agree to develop a Percentage of IP Use ("PIPU") factor that will be applied to all minutes of usage exchanged between them over the Local Interconnection Trunk Groups. This factor will be based upon Level 3's actual and verifiable records of IP-originated traffic. It will be calculated as follows:*
- 3.2.2.4.1 *In the case of calls originating from SBC13-State over the Interconnection Trunks under this Agreement ("Level 3 Terminating Traffic"), Level 3 shall provide a PIPU factor to identify the percentage of that traffic that is in fact terminating to an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement.*
- 3.2.2.4.2 *In the case of calls originating from Level 3 over the Interconnection Trunks under this Agreement ("SBC13-State Originating Traffic"), Level 3 shall provide a PIPU factor to identify the percentage of that traffic that is in fact originating from an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement.*
- 3.2.2.4.3 *Level 3 will provide separate PIPU factors for Level 3 Terminating Traffic and Level 3 Originating Traffic. These PIPU factors shall be applied to all originating or terminating minutes of use (as applicable) exchanged over the Interconnection Trunks between the Parties under this Agreement.*
- 3.2.2.5 *To the extent SBC13-State offers services in and outside of its operating territories that support either origination from or termination to an SBC13-State IP-enabled Services Traffic Customer and the exchange of traffic with the PSTN. To ensure that this traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize SBC13-State's network for toll-bypass, SBC13-State*

*agrees to develop methods for accurately identifying traffic that originates as IP on SBC13State's network and shall likewise provide its own originating and terminating PIPU factors in the same manner as Level 3 under this Section.*

### 3.2.3 *Compensation for IP-enabled Services Traffic*

3.2.3.1 *The Parties shall compensate each other for termination of all minutes of traffic identified as IP-enabled Services Traffic pursuant to application of a PIPU factor at \$0.0007 per minute of use or at the state approved local compensation rates to terminate IP-enabled Services Traffic to either Party's end user customer.*

3.3 *ISP-Bound Traffic shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a Circuit Switched Traffic call over the circuit-switched network to an Internet Service Provider ("ISP") customer of the other Party.*

3.3 In accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and SBC-13STATE in which the originating End User of one Party and the ISP served by the other Party are:

a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or

b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.

In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, traffic is presumed to be ISP-Bound Traffic in accordance with the rebuttable presumption set forth in Section 6.6 of this Appendix.

3.4 *Circuit-Switched Traffic is defined as any Telecommunication Services traffic that:*

3.4.1 *uses ordinary customer premises equipment (CPE) with no enhanced functionality; and*

3.4.2 *Customers using a Circuit-Switched service place and receive calls with the same telephones they use for all other Circuit-Switched calls. So, for example, where the customer dials an NPA-NXX that appears in ILEC tariffs as Telephone Toll Service, the customer would initiate the call by dialing 1 plus the called party's number (NPA-NXX-XXXX), just as in any other circuit-switched long distance calls, which calls are traditionally routed over Feature Group D trunks; and*

3.4.3 *End-user customers do not order a different service, pay different rates, or place*

*and receive calls any differently than they do through IXC traditional circuit-switched long distance service; and*

3.4.4 *The call originates and terminates on the public switched telephone network (PSTN); and*

3.4.4.1 *The call undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology; and*

3.4.5 *Obtains the same circuit-switched access as obtained by other interexchange carriers, and therefore imposes the same burdens on the local exchange as do other interexchange carriers by virtue of the switched access network. Customers of Circuit Switched Traffic receive no enhanced functionality by using the service. Circuit Switched Traffic obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, phone to phone circuit switched service imposes the same burdens on the local exchange as do circuit-switched interexchange calls because it makes use of the access network.*

3.5 The Parties agree that, notwithstanding the classification of traffic under this Appendix, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users *to the extent that those local calling areas are geographically larger than existing approved local calling areas in a state.*

3.6 For ISP-Bound Traffic, and Circuit Switched Traffic including Optional EAS Traffic, and IntraLATA toll, the Party whose End User originates such traffic shall compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic at the applicable rate(s) provided in this Appendix and Appendix Pricing and/or the applicable switched access tariffs. *As of the date of this Agreement, ULECs in SBC CONNECTICUT, cannot seek intercarrier compensation for Circuit Switched Traffic that they originate from or terminate to their end users over a loop provided by SBC-Connecticut to the ULEC pursuant to unbundling obligations or other wholesale arrangements since the rates for unbundled local switching reflect and include the costs of call termination. In SBC CONNECTICUT, when CLEC utilizes SBC CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, all Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by CLEC's end users are not subject to intercarrier compensation as addressed in Section 5.6.4 below.*

3.7 The Parties' obligation to pay intercarrier compensation *arises from traffic that originates from and terminates to customers subscribing to services provided by either party to each other shall commence on the date the Parties agree that the interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass Calling trunks. Accordingly, no reciprocal compensation, access charges or any other form of compensation arises when the Parties exchange traffic that is used to test connections or equipment connected to either Party's network.*

#### 4. RESPONSIBILITIES OF THE PARTIES

4.1 *Reserved for future use. Each Party to this Agreement will be responsible for sending the Calling Party Number (CPN) for calls originating on its network and passed to the network of the other Party. Each Party to this Agreement will be responsible for passing on any CPN it receives from a third party for traffic delivered to the other Party.*

4.2 *For all traffic originated on a Party's network including, without limitation, -Switched Access*

- Traffic and wireless traffic** *To the extent technically feasible*, each Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c) ("CPN") in accordance with Section 4.4 and Originating Carrier Number ("OCN") for Telecommunications Traffic originating on its network and passed to the network of the other party. Neither Party shall *intentionally* strip, alter, modify, add, delete, change, or incorrectly assign any such CPN *for any Telecommunications Traffic.* *Each party shall pass the CPN (and OCN) for the traffic it receives from any third party. The parties recognize that neither party has a billing system capable of determining the physical location of their customers; rather consistent with industry practice nationwide both Parties' billing systems utilize tariff databases and the Local Exchange Routing Guide ("LERG") to identify the location of the switch serving the called or calling NPA-NXX codes and then rate those calls according to the terms and conditions of this Agreement.* CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated and/or dialed the call, when including such information is technically feasible. *To the extent that* if either party *is able to identify* identifies improper, incorrect, or fraudulent use of *Circuit Switched* local exchange services (including but not limited to PRI, ISDN and/or smart trunks or to the extent either party is able to identify stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action.
- 4.3 Reserved for future use.
- 4.4 If one Party is passing CPN *and/ or OCN* but the other Party is not properly receiving such information, the Parties will work cooperatively to correct the problem.
- 4.5 Where either Level 3 or SBC-13STATE delivers *Circuit Switched* Traffic to the other Party for termination to the other Party's customer, each party will provide *OCN and* CPN with such traffic or use commercially reasonable efforts to deliver the equivalent information to the other party on at least Ninety Percent (90%), of all calls exchanged between the Parties in direct proportion to the MOUs of calls exchanged with CPN. If the percentage of calls passed with CPN is less than Ninety Percent (90%), then all *Circuit Switched Traffic* calls passed without CPN will be billed according to the receiving Party's applicable, valid and effective FCC Interstate Access Tariff or Rate Sheet as permitted and filed according to, *inter alia*, Part 64 of the FCC's Rules.
- 4.6 *Where one party is performing a transiting function, the transiting party will pass the Signaling Data, including specifically OCN for traffic received from the originating third party, including any SBC UNE-P carrier customers whether such customers purchase local switching from SBC pursuant to Section 251, 271, 201 or any other regulated or non-regulated arrangement and whether or not such arrangement is publicly or privately filed. Except for SBC originated UNE-P traffic, if the Signaling Data – including OCN – is not received from the originating third party, the transiting Party agrees to be billed as the default originator.* Reserved for future use.
- 4.7 **PARTIES AGREE TO ERECT NO BARRIERS TO IP ENABLED SERVICES TRAFFIC**  
Reserved for future use.
- 4.7.1 *In order for Parties communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM or TDM to IP format in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over circuit switched telephone networks.*
- 4.7.2 *The Parties agree, therefore, that consistent with Section 3.2 above, that they will exchange any and all IP Enabled Services traffic over Local Interconnection Trunk Groups.*

4.7.2.1 *Should any dispute arise over the jurisdictional nature or classification of traffic, the Parties agree to resolve such disputes through the dispute resolution process contained within this Agreement and in no event will either party block the other's traffic without following the dispute resolution procedures contained in this Agreement and according to Applicable Law.*

## 5. **TRAFFIC TERMINATION** Reciprocal Compensation for Termination of Section 251(b)(5) Traffic

5.1 Until and unless SBC-13STATE chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan, the *parties shall exchange ISP-Bound traffic according to the intercarrier compensation rates set by the state public utility commission for local traffic as of the Effective Date of this Agreement* compensation set forth below in Sections 5.2 through 5.6 will also apply to all Section 251(b)(5) Traffic in Section 3.2 of this Appendix and ISP-Bound Traffic as defined in Section 3.3 of this Appendix in that particular state. At such time as SBC13-State the ILEC offers to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC's interim terminating compensation plan, the compensation set forth below in Sections 5.2 through 5.6 will apply only to Section 251(b)(5) Traffic in that state on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. The Parties acknowledge that SBC INDIANA, SBC OHIO, SBC TEXAS, SBC WISCONSIN, SBC ARKANSAS, SBC MICHIGAN, SBC CALIFORNIA and SBC ILLINOIS each have made such offer in its respective state of (i) Indiana, Ohio, Texas and Wisconsin effective on and after June 1, 2003, (ii) Arkansas and Michigan effective on and after July 6, 2003, California effective on and after August 1, 2003, and (iv) Illinois effective on and after September 1, 2003; therefore, the compensation set forth in Sections 5.2 through 5.6 below will apply only to Section 251(b)(5) Traffic in Indiana, Ohio, Texas, Wisconsin, Arkansas, Michigan, California, Illinois and such other state in which SBC-13STATE makes an offer on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. At such time as the FCC issues a successor order to the current interim termination compensation plan, the parties agree to compensate each other according to such Order immediately upon the effective date the FCC order.

5.1 Bifurcated Rates (Call Set Up and Call Duration). The Parties agree to compensate each other for the termination of Section 251(b)(5) Traffic and ISP-Bound Traffic (if applicable in accordance with Section 5.0), on a "bifurcated" basis, meaning assessing an initial Call Set Up charge on a per Message basis, and then assessing a separate Call Duration charge on a per Minute of Use (MOU) basis, where ever per Message charges are applicable. The following rate elements apply, but the corresponding rates are shown in Appendix Pricing:

5.1.1 *Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic eligible for reciprocal compensation will be combined with traffic terminated to Internet Service Providers ("ISPs") to determine the Total Compensable Local Traffic.*

5.1.1.1 *In determining the Total Compensable Local Traffic, Circuit Switched IntraLATA toll and IXC-carried intraLATA toll Traffic are excluded, and will be subject to Meet Point Billing as outlined in the Interconnection Agreement and each Party's applicable state-approved or FCC-approved tariffs or FCC approved or sanctioned terms, rates and conditions.*

5.1.1.2 *The rates for the termination of Circuit Switched intraLATA toll and Originating 8YY traffic are governed by each Party's applicable state-approved or FCC-approved tariffs or FCC approved or sanctioned terms, rates and conditions, provided however, that 8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where the*

*traffic is handed off will be rated as Local Traffic.*

- 5.1.2 *In determining the Total Compensable Local Traffic, SBC13-State-transited minutes of use (MOUs) will be excluded from these calculations.*
- 5.1.2.1 *The rates for SBC ILECs-transited MOUs will be governed by this Interconnection Agreement.*
- 5.1.2.2 *Subject to applicable confidentiality guidelines, SBC 13State and Level 3 will cooperate to identify Circuit Switched toll and transiting traffic; originators of such Circuit Switched toll and transiting traffic; and information useful for settlement purposes with such Circuit Switched toll and transiting traffic originators including but not limited to OCNs associated with traffic originated by carrier customers purchasing SBC UNE-P products or their equivalent.*
- 5.1.1.2.1 *To the extent necessary to ensure proper billing of Circuit Switched toll and transit traffic exchanged over SBC 13State and Level 3 intercarrier local interconnection facilities, SBC 13State and Level 3 agree to explore additional options for management and accounting of Circuit Switched toll and transit traffic, including, but not limited to the exchange of signaling/call-related information in addition to the CPN and OCN.*
- 5.2 *Reserved for future use. Tandem Serving Rate Elements:*
- 5.2.1 Tandem Switching – compensation for the use of tandem switching only.
- 5.2.2 Tandem Transport – compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.
- 5.2.2 End Office Switching in a Tandem Serving Arrangement – compensation for the local end office switching and line termination necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.
- 5.3 *Reserved for future use. End Office Serving Rate Elements:*
- 5.3.1 End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.
- 5.4 *Reserved for future use. CLEC shall only be paid End Office Serving Rate Elements.*
- 5.5 *Reserved for future use. All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) under this Appendix. The parties agree that all terms and conditions regarding disputed minutes of use, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Appendix.*
- 5.6 *Reserved for future use. Intercarrier Compensation for Lawful ULS Traffic*
- 5.6.1 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC MIDWEST REGION 5-STATE end users and CLEC's end users where CLEC utilizes SBC MIDWEST REGION 5-STATE's Lawful ULS (including UST) of , such traffic shall be paid for reciprocally at the Lawful ULS Reciprocal Compensation rate contained in Appendix Pricing. For the states of Wisconsin, Michigan and Illinois, CLEC shall pay SBC

WISCONSIN, SBC MICHIGAN and SBC ILLINOIS the FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic.

- 5.6.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC CALIFORNIA, SBC NEVADA and SBC SOUTHWEST REGION 5-STATE end users and CLEC's end users where CLEC utilizes Lawful ULS (including UST) of SBC CALIFORNIA, SBC NEVADA or SBC SOUTHWEST REGION 5-STATE, such traffic shall be paid for reciprocally at the FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic.
- 5.6.3 For the purposes of compensation where CLEC utilizes SBC-12STATE's Lawful ULS (including UST), CLEC has the sole obligation to enter into a compensation agreement with third party carriers that CLEC originates traffic to and terminates traffic from, including traffic carried by Shared Transport Facilities and traffic carried on the IntraLATA Transmission Capabilities. In no event will SBC-12STATE have any liability to CLEC or any third party if CLEC fails to enter into such compensation arrangements. In the event that traffic is exchanged with a third party carrier with whom CLEC does not have a traffic compensation agreement, CLEC will indemnify, defend and hold harmless SBC-12STATE against any and all losses including without limitation, charges levied by such third party carrier. The third party carrier and CLEC will bill their respective charges directly to each other. SBC-12STATE will not be required to function as a billing intermediary, e.g., clearinghouse. SBC-12STATE may provide information regarding such traffic to other telecommunications carriers or entities as appropriate to resolve traffic compensation issues.
- 5.6.4 In SBC CONNECTICUT, when CLEC utilizes SBC CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, SBC CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC's end users. CLEC utilizing Lawful Unbundled Local Switching can not seek intercarrier compensation from SBC CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an SBC CONNECTICUT end user or a third party carrier's end user.
6. **RESERVED FOR FUTURE USE RATES, TERMS AND CONDITIONS OF FCC'S INTERIM ISP TERMINATING COMPENSATION PLAN**
- 6.1 ***Reserved for future use.*** The Parties hereby agree that the following rates, terms and conditions set forth in Sections 6.2 through 6.6 shall apply to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s) SBC-13STATE has made an offer as described in Section 5 above effective on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in the particular state and that all ISP-Bound Traffic is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4, below.
- 6.2 ***Reserved for future use.*** Inter-carrier Compensation for all ISP-Bound Traffic and Section 251(b)(5) traffic
- 6.2.1 The rates, terms, conditions in Sections 6.2 through 6.6 apply only to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic as defined in Section 3.2 and Section 3.3 above and is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4 below.
- 6.2.2 The Parties agree to compensate each other for the transport and termination of all Section 251(b)(5) and ISP-Bound Traffic and traffic on a minute of use basis, at \$.0007 per minute of

- use.
- 6.2.3 Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.
- 6.3 ***Reserved for future use.*** ISP- Bound Traffic Growth Cap
- 6.3.1 On a calendar year basis, as set forth below, the Parties agree to cap overall ISP-Bound Traffic minutes of use based upon the 1st Quarter 2001 ISP minutes for which the CLEC was entitled to compensation under its Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule:
- Calendar Year 2001 – 1st Quarter 2001 compensable ISP-Bound Traffic minutes, times 4, times 1.10
- Calendar Year 2002 – Year 2001 compensable ISP-Bound Traffic minutes, times 1.10
- Calendar Year 2003 – Year 2002 compensable ISP-Bound Traffic minutes
- Calendar Year 2004 and thereafter – Year 2002 compensable ISP-Bound Traffic minutes
- 6.3.2 Notwithstanding anything contrary herein, in Calendar Year 2004, the Parties agree that ISP-Bound Traffic exchanged between the Parties during the entire period from January 1, 2004 until December 31, 2004 shall be counted towards determining whether CLEC has exceeded the growth caps for Calendar Year 2004.
- 6.3.3 ISP-Bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. “Bill and Keep” refers to an arrangement in which neither of two interconnecting parties charges the other for terminating traffic that originates on the other party’s network ; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.
- 6.4 ***Reserved for future use.*** Bill and Keep for ISP-Bound Traffic in New Markets
- 6.4.1 In the event the Parties have not previously exchanged ISP-Bound Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-Bound Traffic between the Parties for the remaining term of this Agreement in any such LATAs in that state.
- 6.4.2 In the event the Parties have previously exchanged traffic in a LATA in a particular state prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-Bound Traffic exchanged in that LATA, and that any ISP-Bound Traffic in other LATAs shall be Bill and Keep for the remaining term of this Agreement.
- 6.5 ***Reserved for future use.*** Growth Cap and New Market Bill and Keep Arrangements
- 6.5.1 Wherever Bill and Keep for ISP-Bound shall segregate the Bill and Keep traffic from other compensable traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.
- 6.5.2 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-Bound Traffic, and does not include Optional EAS traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.
- 6.6 ***Reserved for future use.*** ISP-Bound Traffic Rebuttable Presumption
- 6.6.1 In accordance with Paragraph 79 of the FCC’s ISP Compensation Order, the Parties agree

that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 6.3. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, the Parties will remain obligated to pay the presumptive rates (the rates set forth in Section 5 for traffic below a 3:1 ratio, the rates set forth in Section 6.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

- 6.7 *Reserved for future use.* For purposes of this Section 6, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 15.0 below. The Party that transport and terminates more "Billable Traffic" ("Out-of-Balance Carrier") will, on a monthly basis, calculate (i) the amount of such traffic to be compensated at the FCC's interim ISP terminating compensation rate set forth in Section 6.2.2 above and (ii) the amount of such traffic subject to bill and keep in accordance with Sections 6.3, 6.4 and 6.5 above. The Out-of-Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this Agreement and the FCC's interim ISP terminating compensation plan.

## 7. OTHER TELECOMMUNICATIONS TRAFFIC

- 7.1 *Telecommunications Traffic which is governed by the terms, rates and conditions contained in either party's filed and effective federal or state tariffs, or which is determined to be interstate interexchange services and permissively detariffed (See, e.g., 47 C.F.R. § 61 (2003)) will be governed by the rates, terms and conditions of either Party's tariff or of Level 3's terms, rates and conditions subject to Applicable Law including but not limited to state law or federal law.* The compensation arrangements set forth in Sections 5 and 6 of this Appendix are not applicable to (i) interstate or intrastate Exchange Access traffic, (ii) Information Access traffic, (iii) Exchange Services for access, or (iv) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of ISP-Bound Traffic which is addressed in this Appendix. All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of applicable federal and state tariffs.
- 7.2 *Reserved for future use.* Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. "FX Telephone Numbers" (also known as "NPA-NXX" codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation), or if jointly provisioned FGA service, subject to the terms and conditions of Appendix FGA. FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination

compensation for FX Traffic is subject to a bill and keep arrangement. Neither Party will assign a telephone number to an End User where such telephone number is assigned to an exchange in a different LATA than the End User is physically located. To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement.

7.3 Private Line Services include private line-like and special access services and are not subject to intercarrier compensation. Private Line Services are defined as dedicated Telecommunications channels provided between two points or switched among multiple points and are used for voice, data, audio or video transmission. Private Line services include, but are not limited to, WATS access lines.

7.4 ***Reserved for future use.*** The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 3.3) could also be traded outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Sections 5 and 6 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of:

- FX Traffic
- Optional EAS Traffic
- IntraLATA Interexchange Traffic
- InterLATA Interexchange Traffic
- 800, 888, 877, ("8YY") Traffic
- Feature Group A Traffic
- Feature Group D Traffic

7.5 ***Reserved for future use.*** The Parties agree that, for the purposes of this Appendix, either Parties' End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 5 and 6 above do not apply. The Agreement's rates, terms and conditions for FX Traffic, Optional EAS Traffic, 8YY Traffic, Feature Group A Traffic, Feature Group D Traffic, IntraLATA Traffic and/or InterLATA Traffic, whichever is applicable, shall apply.

## 8. **OPTIONAL CALLING AREA TRAFFIC – SBC ARKANSAS, SBC KANSAS AND SBC TEXAS**

8.1 Compensation for Optional Calling Area (OCA) ***Circuit Switched*** Traffic is for the termination of intercompany ***Circuit Switched*** traffic to and from the one-way or two-way optional exchanges(s) and the associated metropolitan area.

8.2 ***The Parties agree to comply with Applicable Law with regard to Optional Calling Areas (OCAs).*** In the context of this Appendix, **Optional Calling Areas (OCAs)** exist only in the states of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. CLEC and SBC ARKANSAS, SBC KANSAS and SBC TEXAS are not precluded from establishing its own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used for any such offering will still be administered as described in this Appendix.

8.3 ***Reserved for future use.*** When CLEC uses unbundled local switching to provide services associated with a telephone number with a NXX which has an expanded 2-way area calling scope (EAS) in a SBC ARKANSAS, SBC KANSAS or SBC TEXAS end office, CLEC will pay the charge contained in Appendix Pricing UNE – Schedule of Prices labeled "EAS Additive per MOU". The additives to be paid by CLEC to SBC ARKANSAS, SBC KANSAS or SBC TEXAS are \$0.024 per MOU for toll-free calls made by a SBC ARKANSAS, SBC KANSAS or SBC TEXAS customer from a metro exchange to an exchange contiguous to a metro exchange and \$0.0355 per MOU for toll free calls made by a SBC ARKANSAS, SBC KANSAS or SBC TEXAS customer to CLEC's optional 2-way EAS customer for contiguous exchanges other than those contiguous to a metro exchange within the

scope of the 2-way calling area. These additives will apply in addition to cost-based transport and termination rates for Optional EAS service set forth in the rates spreadsheet. These additives are reciprocal in nature, and CLEC is entitled to receive compensation from SBC ARKANSAS, SBC KANSAS or SBC TEXAS if CLEC agrees to waive charges for its customers who call SBC ARKANSAS, SBC KANSAS or SBC TEXAS optional two-way EAS customers.

- 8.4 *To the extent that they are relevant and comply with Applicable Law, The state specific OCA Transport and Termination rates are outlined in Appendix Pricing.*

## 9. MCA TRAFFIC – SBC MISSOURI

- 9.1 For compensation purposes in the state of Missouri, ***Circuit Switched Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as "Metropolitan Calling Area (MCA) Traffic" and "Non-MCA Traffic."*** MCA Traffic is traffic originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders) and the call is a Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.

9.1.1 Either party providing Metropolitan Calling Area (MCA) service *for **Circuit Switched Traffic*** shall offer the full calling scope prescribed in Case No. TO-92-306 *according to the terms of the MCA Orders or as otherwise ordered by the Missouri Public Service Commission without regard to the identity of the called party's local service provider.* The parties may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as "MCA" service *subject to Applicable Law.*

9.1.2 Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, ***Circuit Switched*** MCA Traffic shall be exchanged on a bill-and-keep intercompany compensation basis meaning that the party originating a call defined as MCA Traffic shall not compensate the terminating party for terminating the call, *subject to Applicable Law.*

- 9.2 ***Only to the extent required by the Missouri Public Service Commission Order in Case No. TO-99-483, the The*** parties agree to use the Local Exchange Routing Guide (LERG) to provision the appropriate MCA NXXs in their networks. The LERG should be updated at least forty-five (45) days in advance of opening a new code to allow the other party the ability to make the necessary network modifications. If the Commission orders the parties to use an alternative other than the LERG, the parties will comply with the Commission's final order.

- 9.3 If CLEC provides service via resale or in conjunction with ported numbers in the MCA, the appropriate MCA NXXs will be updated by SBC SOUTHWEST REGION 5-STATE.

## 10. PRIMARY TOLL CARRIER ARRANGEMENTS

- 10.1 In those SBC-13STATES where Primary Toll Carrier (PTC) arrangements are mandated, for intraLATA Toll Traffic which is subject to a PTC arrangement and where SBC-13STATE is the PTC, SBC-13STATE shall deliver such intraLATA Toll Traffic to the terminating carrier in accordance with the terms and conditions of such PTC arrangement *and Applicable Law, but this in no way shall restrict either Party from exchanging such traffic over the Parties' existing Local Interconnection Trunk Groups.* Upon receipt of verifiable Primary Toll records, SBC-13STATE shall reimburse the terminating carrier at ***SBC-13STATE's the terminating carriers'*** applicable tariffed terminating switched access rates *for **Circuit Switched Traffic***. When transport mileage cannot be determined, an average transit transport mileage shall be applied as set forth in Appendix Pricing.

## 11. INTRALATA 800 *TELECOMMUNICATIONS* TRAFFIC

- 11.1 The Parties shall provide to each other intraLATA 800 Access Detail Usage *or equivalent* Data for Customer billing and intraLATA 800 Copy Detail Usage *or equivalent* Data for access billing in Exchange Message Interface (EMI) format *or other mutually agreeable format*. On a monthly basis the **The** Parties agree to provide this data to each other *on a monthly basis* at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable record to the terminating Party, the originating Party will not bill the terminating Party any interconnection charges for this traffic.
- 11.2 ***Non-local*** IntraLATA 800 Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query. Billing shall be based on originating and terminating NPA/NXX. ***8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated and compensated as Local Traffic.***

## 12. MEET POINT BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION

- 12.1 Intercarrier compensation for Switched Access ***Circuit Switched*** Traffic *may shall* be on a Meet Point Billing ("MPB") basis as described below. ***To the extent Level 3 is unable to provide records formatted according to Ordering and Billing Forum's MECOD and MECAB guidelines, the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic.***
- 12.2 The Parties *may will* establish MPB arrangements in order to provide Switched Access Services ***for Circuit Switched Traffic*** via the respective carrier's Tandem Office Switch *or switch providing tandem switching capability* in accordance with the MPB guidelines contained in the Ordering and Billing Forum's MECOD and MECAB guidelines, as amended from time to time.
- 12.3 Billing for the Switched Exchange Access Services ***for Circuit Switched Traffic*** jointly provided by the Parties via MPB arrangements *may shall* be according to the multiple bill/single tariff method. As described in the MECAB *guideline document*, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates ***to the extent permitted by Applicable Law***. The residual interconnection charge (RIC), if any, will be billed by the Party providing the end office function ***to the extent permitted by Applicable Law***.
- 12.4 The Parties *may will* maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages ***to the extent permitted by Applicable Law***.
- 12.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services ***for Circuit Switched Traffic*** jointly handled by the Parties via the Meet Point Billing arrangement. Information shall be exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records ("AURs") to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.
- 12.6 MPB shall also apply to all jointly provided Switched Access MOU ***for Circuit Switched Traffic*** bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs ***to the extent that those calls bear translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated as Local Traffic***). The Party that performs the SSP function (launches the query to the 800 database) will bill the 800 Service Provider for this function.
- 12.7 Each Party will act as the Official Recording Company for switched access usage when it is jointly provided between the Parties. As described in the MECAB document, the Official Recording Company for tandem routed traffic is: (1) the end office company for originating traffic, (2) the tandem company for terminating traffic and (3) the SSP company for originating 800 traffic.

- 12.8 SBC-13STATE and CLEC agree to provide the other Party with notification of any discovered errors in the record exchange process within ten (10) business days of the discovery.
- 12.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within *ninety (90) sixty (60)* days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.
13. **RESERVED FOR FUTURE USE. COMPENSATION FOR ORIGINATION AND TERMINATION OF INTERLATA TRAFFIC NOT SUBJECT TO MEET POINT BILLING**
- 13.1 **Where a CLEC originates or terminates its own end user InterLATA Traffic not subject to Meet Point Billing, the CLEC must purchase FG D access service from SBC-13STATE's state or federal access tariffs, whichever is applicable, to carry such InterLATA Traffic.**
14. **INTRALATA TOLL TRAFFIC COMPENSATION**
- 14.1 For *Circuit-Switched Traffic* that is correctly rated as intrastate intraLATA toll, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, **but such compensation shall not exceed the compensation contained in an SBC-13STATE's tariff in whose exchange area the End User is located.** For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff, **but such compensation shall not exceed the compensation contained in an SBC-13STATE's tariff in whose exchange area the End User is located.** Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem *or switch providing equivalent geographic coverage* is used to terminate traffic.
15. **BILLING ARRANGEMENTS FOR TERMINATION OF *CIRCUIT SWITCHED* SECTION 251(b)(5), OPTIONAL EAS, ISP-BOUND AND *CIRCUIT SWITCHED* INTRALATA TOLL TRAFFIC**
- 15.1 In SBC-13STATE each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard recordings made within the terminating carrier's network for ***Circuit Switched Section 251(b)(5)*** Traffic, Circuit Switched Optional EAS Traffic, ISP-Bound Traffic and Circuit Switched IntraLATA Toll Traffic. These recordings are the basis for each Party to generate bills to the other Party.
- 15.1.1 Where a terminating CLEC is not technically capable of billing the originating carrier through the use of terminating records, SBC-13STATE will provide the appropriate originating Category of records.
- 15.1.2 The decision by the CLEC to utilize terminating recordings does not in any way relieve the obligation of the CLEC to exchange records with other LECs.
- 15.2 **The Parties agree that they will exchange ISP-bound traffic at rates set by the FCC and will update these rates immediately upon the effective date of any subsequent FCC order. In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, ISP-Bound Traffic will be calculated using the 3:1 Presumption as set forth in Section 6.6 of this Appendix.**
- 15.3 The measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.
- 15.4 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within *ninety (90) sixty (60)* days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

**16. RESERVED FOR FUTURE USE.****16. Switched Access Traffic**

16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:

- (i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider,
- (ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;
- (iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or
- (iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party.

Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361 (Released April 21, 2004).

16.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 16.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such

interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.

17. RESERVED FOR FUTURE USE.

18. RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS

**18.1 MUTUAL RESERVATION OF RIGHTS**

**18.1.1** *The Parties have been unable to agree as to whether Voice-embedded IP Communication which rides on facilities which cross LATA boundaries constitutes Switched Access Traffic as defined herein. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional treatment of Voice-embedded IP Communications, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such communications and the compensation payable by the Parties for such communications, if any. Voice-embedded IP Communications is defined as communications that either:*

**18.1.1.1** *originates on the PSTN within the same LATA of the Interconnection Point, and is passed to an end-user from an internet protocol network provider in internet protocol format, or is terminated over the PSTN in circuit-switched format after having been transmitted from an end-user to an internet protocol provider in internet protocol format and exchanged between Level 3 and SBC-13STATE at the Interconnection Point within the same LATA as the called party, or*

**18.1.1.2** *that originates and terminates to end users within the same exchange or a corresponding Extended Area Service exchange will be reciprocally compensated in the same manner as Local Traffic in this Agreement.*

**18.1.2** *The Parties recognize that the question of intercarrier compensation for the exchange of IP-enabled Services Traffic has been a contested matter and proceedings currently underway at the FCC and at State Commissions could help to resolve the uncertainty relating to such traffic exchange. However, the Parties agree, as a compromise and without reference to any change in law that may occur (but subject to the Parties' Reservation of Rights above), that IP-enabled Services Traffic shall be exchanged subject to the following rates, terms, and conditions during the term of this Agreement. Notwithstanding any other provisions of this Agreement, if either Party provides the other Party a Percent IP Usage ("PIPU") factor, traffic shall be rated for intercarrier compensation purposes under the terms of this Section.*

**18.1.3** **18.1** *The Parties acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic (the "ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, No. 01-1218 (D.C. Cir. 2002). The Parties agree that by executing this Appendix and carrying out the intercarrier compensation terms and conditions herein, neither Party waives any of its rights, and expressly reserves all of its rights, under the ISP Compensation Order or any other regulatory, legislative or judicial action including, but not limited to, the right to elect to invoke (to the*

extent the ILEC has not already elected to offer to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan as of the Effective Date of this Agreement) on a date specified by SBC-13STATE the FCC's interim ISP terminating compensation plan, after which date ISP-Bound traffic exchanged between the Parties will be subject to Sections 6.0 through 6.6 above.

- 18.2 *Reserved for future use.* To the extent SBC-13STATE has not already provided notice of its offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the terms and conditions of the FCC's interim terminating compensation plan in a particular state as of the Effective Date of this Agreement, SBC-13STATE agrees to provide 20 days advance written notice to the person designated to receive official contract notices in the Interconnection Agreement of the date upon which the SBC-13STATE designates that the FCC's ISP terminating compensation plan shall begin in such state. Notwithstanding anything contrary in this Agreement, CLEC agrees that on the date designated by SBC-13STATE in a particular state, the Parties will begin paying and billing Intercarrier Compensation for ISP-Bound Traffic to each other at the rates, terms and conditions specified in Sections 6.0 through 6.6 above.
- 18.3 *Reserved for future use.* SBC-13STATE and CLEC agree to carry out the FCC's interim ISP terminating compensation plan on the date designated by SBC-13STATE in a particular state without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP-Bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Appendix, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.
- 18.4 *Reserved for future use.* Should a regulatory agency, court or legislature change or nullify the SBC-13STATE's designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among SBC-13STATE, CLEC and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.
- 18.5 *Reserved for future use.* The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court could order an injunction, stay or other retroactive ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions.
- 18.6 *Reserved for future use.* Because of the possibilities in Section 17.5, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the Parties will also agree that any billing true ups, reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for

retroactive compensation adjustments, to apply to all traffic among SBC-13STATE, CLEC, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.

- 18.7 The Parties further acknowledge that the FCC has issued a Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally. *See, In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92; established in Notice of Proposed Rulemaking Order No. 01-132, April 27, 2001. In the event that a final, legally binding FCC Order is issued upon the conclusion of that NPRM proceeding and during the term of this Appendix, the Parties agree to conform the relevant affected provisions of this Agreement to the compensation procedures set forth in that Order immediately upon issuance of any such Order.

## 19. ADDITIONAL TERMS AND CONDITIONS

- 19.1 *Other rates, terms and conditions are addressed in General Terms and conditions Section 49.0. Legitimately Related Terms. Every interconnection, service and network element provided here shall be subject to all rates, terms and conditions contained in the underlying Interconnection Agreement which are legitimately related to such interconnection, service or network element. 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 be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.*