
From: Tamplin, James [jt9576@att.com]
Sent: Monday, September 08, 2008 2:53 PM
To: Hicks, Thomas
Cc: Angela Collins
Subject: Final group of Miscellaneous Appendices
Attachments: AT&T IL Perf Meas auto evolve 9-8-08.doc; ATT IL & TX - Recording 9-8-08.DOC; ATT IL & TX - UNE 9-8-08.DOC; ATT IL & TX - Virtual Collocation 9-8-08.DOC; ATT TX Performance Measures 9-8-08.doc

Tom,

Attached is the final group of appendices for the IL & TX arbitrations. These include the applicable performance measurements appendices for IL & TX.

<<AT&T IL Perf Meas auto evolve 9-8-08.doc>> <<ATT IL & TX - Recording 9-8-08.DOC>> <<ATT IL & TX - UNE 9-8-08.DOC>> <<ATT IL & TX - Virtual Collocation 9-8-08.DOC>> <<ATT TX Performance Measures 9-8-08.doc>>

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APPENDIX PERFORMANCE MEASUREMENTS

DRAFT - FOR NEGOTIATION PURPOSES ONLY

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APPENDIX PERFORMANCE MEASUREMENTS

1. INTRODUCTION

- 1.1 ~~AT&T ILLINOIS~~ means the AT&T-owned ILEC doing business in Illinois. ~~AT&T MIDWEST REGION 5 STATE~~ means the AT&T ILECs as identified in the General Terms and Conditions operating in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. The performance measurements and remedy plan referenced herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect Parties' rights and obligations. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~ is limited to providing any particular manner of access. The Parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and state Commission decisions/regulations, tariffs, and within this interconnection agreement.
- 1.2 **Performance Measurements** means the set of performance measurements approved by the specific State Commission in the state-specific proceeding(s) listed in Section 1.8 below. The first set of measurements effective under this agreement is that first submitted in the proceeding listed in Section 1.8 below after October 15, 2007. For purposes of implementation, such measures shall be effective as of December 1, 2007 for performance beginning with December 2007 results, except for Michigan, where these measurements will be effective with the first full month of performance after Commission approval of the measures.
- 1.3 **AT&T Midwest Remedy Plan** means the first remedy plan filed for State Commission review and approved in the state-specific proceeding listed in Section 1.8 below on or after October 15, 2007. For purposes of implementation, that remedy plan shall be effective as of December 1, 2007 for performance beginning with December 2007 results, except for Michigan, where the remedy plan will be effective with the first full month of performance after Commission approval of the plan.
- 1.4 Any subsequent Commission-approved additions, modifications and/or deletions to the Performance Measurements, shall be automatically incorporated into this Agreement by reference in the first full month following the effective date of the Commission's order, or as otherwise agreed to by the Parties.
- 1.5 Any future Commission-ordered additions, modifications and/or deletions to the AT&T Midwest Remedy Plan (and its supporting documents) in the proceedings or under the Rule as listed in Section 1.8 below, or any successor proceeding or Rule, to which no Party has objected, shall be automatically incorporated into this Interconnection Agreement by reference in the first full month following the effective date of the Commission's order, or as otherwise agreed by the Parties.
- 1.6 ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~'s agreement to implement this Performance Measurements Plan will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~ and CLEC agree that CLEC may not use the existence of this Plan as evidence that ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~ has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~'s conduct underlying its performance measures, and the performance data provided under the performance measures, however, are not made inadmissible by these terms. Any CLEC accepting this performance measurements plan agrees that ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~'s performance with respect to this plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation.
- 1.7 Nothing herein shall be interpreted to be a waiver of ~~AT&T ILLINOIS/AT&T MIDWEST REGION 5 STATE~~'s right to argue and contend in any forum, in the future, that sections 251 and 252 of the Telecommunications Act of 1996 impose no duty or legal obligation to negotiate and/or mediate or arbitrate a self-executing liquidated damage and remedy plan.
- 1.8 Sources of Commission authority over Performance Measures and/or the AT&T Midwest Remedy Plan:

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- Illinois - 83 IL. Administrative Code Part 731
- Indiana - Cause No. 41657
- Michigan - Case No. U-11830
- Ohio - Case No. 00-042-TP-CO1
- Wisconsin - 6720 TI 198 (Performance Measurements only)
- Wisconsin - AT&T Midwest Remedy Plan as approved by the Commission in CLEC-specific ICA

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1.9 Provisions of this Performance Measurements Appendix will terminate in accordance with Section 6.5-6 (Section 6.6 for Illinois and Michigan) of the AT&T Midwest Remedy Plan.

APPENDIX RECORDING

DRAFT - FOR NEGOTIATION PURPOSES ONLY

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**APPENDIX RECORDING
(Recording, Message Processing And
Provision Of Interexchange Carrier Transported
Message Detail Appendix)**

1. INTRODUCTION

1.1 This Appendix sets forth the terms and conditions under which ~~AT&T STATE~~ ~~AT&T 1322STATE~~ will provide recording, message processing and message detail services to a Facility-Based Provider as described in **Exhibit I** and **Exhibit II**, Exhibits I and II are part of this Appendix by reference. The terms and conditions under this Appendix will also apply when the Facility-Based Provider is the Recording Company.

1.1.1 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications Inc. d/b/a AT&T-ALABAMA, d/b/a AT&T-FLORIDA, d/b/a AT&T-GEORGIA, d/b/a AT&T-KENTUCKY, d/b/a AT&T-LOUISIANA, d/b/a AT&T-MISSISSIPPI, d/b/a AT&T-NORTH CAROLINA, d/b/a AT&T-SOUTH CAROLINA and d/b/a AT&T-TENNESSEE, Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.

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1.1.2 ~~AT&T STATE~~ means the AT&T-owned ILEC doing business in either Illinois or Texas. ~~AT&T 2STATE~~ As used herein, ~~AT&T 2STATE~~ means ~~AT&T CALIFORNIA~~ and ~~AT&T NEVADA~~, the applicable AT&T owned ILEC(s) doing business in California and Nevada.

1.1.3 ~~AT&T ILLINOIS~~ means the AT&T-owned ILEC doing business in Illinois. ~~AT&T 13STATE~~ As used herein, ~~AT&T 13STATE~~ means ~~AT&T SOUTHWEST REGION 5 STATE~~, ~~AT&T MIDWEST REGION 5 STATE~~, ~~AT&T 2STATE~~ and ~~AT&T CONNECTICUT~~ the applicable AT&T owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

1.1.4 ~~AT&T TEXAS~~ means the AT&T-owned ILEC doing business in Texas. ~~AT&T CONNECTICUT~~ As used herein, ~~AT&T CONNECTICUT~~ means The Southern New England Telephone Company, the applicable above listed ILEC doing business in Connecticut.

1.1.5 Intentionally Omitted. ~~AT&T MIDWEST REGION 5 STATE~~ As used herein, ~~AT&T MIDWEST REGION 5 STATE~~ means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

1.1.6 Intentionally Omitted. ~~AT&T SOUTHWEST REGION 5 STATE~~ As used herein, ~~AT&T SOUTHWEST REGION 5 STATE~~ means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

2. DEFINITIONS

2.1 **"Access Usage Record" (AUR)** - a message record which contains the usage measurement reflecting the service feature group, duration and time of day for a message and is subsequently used to bill access to Interexchange Carriers (IXCs).

- 2.2 **"Assembly and Editing"** - the aggregation of recorded customer message details to create individual message records and the verification that all necessary information required ensuring all individual message records meet industry specifications is present.
- 2.3 **"Billing Company"** - the company that bills End Users for the charges incurred in originating and terminating IXC transported calls.
- 2.4 **"Billable Message"** - a message record containing details of a completed IXC transported call which is used to bill an ~~e~~End ~~u~~User.
- 2.5 **"Centralized Message Distribution System" (CMDS)** - the national network of private line facilities used to exchange Exchange Message Interface (EMI) formatted billing data between ~~AT&T-STATE~~ ~~AT&T-1322STATE~~ and the Billing Company.
- 2.6 **"Data Transmission"** - the forwarding by ~~AT&T-STATE~~ ~~AT&T-1322STATE~~ of IXC transported toll message detail and/or access usage record detail in EMR format over data lines or on magnetic tapes to the appropriate Billing Company.
- 2.7 **"Exchange Message Interface" (EMI)** - Industry standard message format as described in accordance with the Telcordia Practice BR010-200-010 developed for the interexchange of telecommunications message information.
- 2.8 **"Interexchange Carrier" (IXC)** - A third party transmission provider that carries long distance voice and non-voice traffic between user locations for a related recurring fee. IXCs provide service interstate and intrastate. In some states IXCs are permitted to operate within a LATA.
- 2.9 **"Interexchange Carrier Transported"** - telecommunications services provided by an IXC or traffic transported by facilities belonging to an IXC.
- 2.10 **"Local Access and Transport Area" (LATA)** - service areas defined in FCC Docket 78-72.
- 2.11 **"Message Processing"** - the creation of individual EMI formatted billable message detail records from individual recordings that reflect specific billing detail for use in billing the End User and/or access usage records from individual recordings that reflect the service feature group, duration and time of day for a message, Carrier Identification Code, among other fields, for use in billing access to the Interexchange Carriers. Message Processing includes performing CMDS online edits required to ensure message detail and access usage records are consistent with CMDS specifications.
- 2.12 **"Originating Local Exchange Carrier Company"** - the company whose local exchange telephone network is used to originate calls thereby providing originating exchange access to IXCs.
- 2.13 **"Provision of Message Detail"** - the sorting of all billable message detail and access usage record detail by Revenue Accounting Office, Operating Company Number or Service Bureau, splitting of data into packs for invoicing, and loading of data into files for data transmission to CLEC for those records created internally or received from other Local Exchange Carrier Companies or Interexchange Carriers through ~~AT&T-STATE~~ ~~AT&T-1322STATE~~'s internal network or national CMDS.
- 2.14 **"Record"** - a logical grouping of information as described in the programs that process information and create the data files.
- 2.15 **"Recording"** - the creation and storage on magnetic tape or other medium of the basic billing details of a message in Automatic Message Accounting (AMA) format converted to EMI layout.
- 2.16 **"Service Switching Point" (SSP)** - a signaling point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 2.17 **"Recording Company"** - the company that performs the functions of recording and message processing of Interexchange Carrier (IXC) transported messages and the provision of message detail.
- 2.18 **"Switching Control Point" (SCP)** - the real time database system that contains routing instructions for 800 calls. In addition to basic routing instructions, the SCP may also provide vertical feature translations, i.e.,

time of day, day of week routing, out of area screening and/or translation of the dialed 800 number to its assigned working telephone number.

- 2.19 "800 SCP Carrier Access Usage Summary Record" (SCP Record) - a summary record which contains information concerning the quantity and types of queries launched to an AT&T-STATEAT&T-1322STATE SCP.
- 2.20 "Terminating Local Exchange Carrier Company" - the company whose local exchange telephone network is used to terminate calls thereby providing terminating exchange access to IXCs.

3. RESPONSIBILITIES OF THE PARTIES

- 3.1 AT&T-STATEAT&T-1322STATE will record all IXC transported messages for CLEC carried over all Feature Group Switched Access Services that are available to AT&T-STATEAT&T-1322STATE provided recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by AT&T-STATEAT&T-1322STATE provided equipment or operators) will not be recorded. The recording equipment will be provided at locations selected by AT&T-STATEAT&T-1322STATE.
- 3.2 AT&T-STATEAT&T-1322STATE will perform assembly and editing, message processing and provision of applicable access usage record detail for IXC transported messages if the messages are recorded by AT&T-STATEAT&T-1322STATE.
- 3.3 AT&T-STATEAT&T-1322STATE will provide access usage records that are generated by AT&T-STATEAT&T-1322STATE.
- 3.4 Assembly and editing will be performed on all IXC transported messages recorded by AT&T-STATEAT&T-1322STATE, during the billing period established by AT&T-STATEAT&T-1322STATE and selected by CLEC.
- 3.5 Standard EMI record formats for the provision of billable message detail and access usage record detail will be established by AT&T-STATEAT&T-1322STATE and provided to CLEC.
- 3.6 Recorded billable message detail and access usage record detail will not be sorted to furnish detail by specific eEnd uUsers, by specific groups of eEnd uUsers, by office, by feature group or by location.
- 3.7 AT&T-STATEAT&T-1322STATE will provide message detail to CLEC in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable to both pParties.
- 3.8 In Exhibit II, CLEC will identify separately the location where the data transmissions should be sent (as applicable) and the number of times each month the information should be provided, ~~except for AT&T-2STATE. For AT&T-2STATE, CLEC will identify the location and number of times each month the information should be provided via Appendix Data Exchange's Technical Requirements Form document.~~ AT&T-STATEAT&T-1322STATE reserves the right to limit the frequency of transmission to existing AT&T-STATEAT&T-1322STATE processing and work schedules, holidays, etc.
- 3.9 AT&T-STATEAT&T-1322STATE will determine the number data files required to provide the access usage record detail to CLEC.
- 3.10 Recorded billable message detail and/or access usage record detail previously provided CLEC and lost or destroyed through no fault of AT&T-STATEAT&T-1322STATE will not be recovered and made available to CLEC except on an individual case basis at a cost determined by AT&T-STATEAT&T-1322STATE.
- 3.11 When AT&T-STATEAT&T-1322STATE receives rated billable messages from an IXC or another Local Exchange Carrier (LEC) that are to be billed by CLEC, AT&T-STATEAT&T-1322STATE will forward those messages to CLEC.
- 3.12 AT&T-STATEAT&T-1322STATE will record the applicable detail necessary to generate access usage records and forward them to CLEC for its use in billing access to the IXC.

- 3.13 When CLEC is the Recording Company, the CLEC agrees to provide its recorded billable messages detail and access usage record detail data to AT&T-STATE/AT&T-1322STATE under the same terms and conditions of this Appendix.

4. BASIS OF COMPENSATION

- 4.1 AT&T-STATE/AT&T-1322STATE as the Recording Company, agrees to provide recording, assembly and editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by the CLEC in accordance with this Appendix on a reciprocal, no-charge basis. CLEC, as the Recording Company, agrees to provide any and all Access Usage Records (AURs) required by AT&T-STATE/AT&T-1322STATE on a reciprocal, no-charge basis. The Parties agree that this mutual exchange of records at no charge to either Party shall otherwise be conducted according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.

5. LIABILITY

- 5.1 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- 5.2 When either Party is notified that, due to error or omission, incomplete data has been provided to the non-Recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording Company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the details initially were made available to the non-Recording Company. If written notification is not received within sixty (60) calendar days, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company.
- 5.3 If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, assembly and editing, rating, message processing, and/or transmission of message detail, both Parties will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.
- 5.4 Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data.
- 5.5 Each Party agrees to defend, indemnify, and hold harmless the other Party from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the use of this service by the other Party, its customers or eEnd uUsers.
- 5.6 Each Party also agrees to release, defend, indemnify and hold harmless the other Party from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by the Party's employees and equipment associated with provision of this service. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.
- 5.7 Each Party also agrees to release, defend, indemnify and hold harmless the Recording Company from any claim, demand or suit to perform under this Agreement should any regulatory body or any State or Federal Court find the existing terms of this contract to either be illegal, unenforceable, against public policy, or improper for the Recording Company.

- 5.8 Each Party makes no representations or warranties, express or implied, including but not limited to any warranty as to merchantability or fitness for intended or particular purpose with respect to services provided hereunder. Additionally, each Party assumes no responsibility with regard to the correctness of the data supplied when this data is accessed and used by a third party.

EXHIBIT I SERVICES

The attached pages of this Exhibit show the service options that are offered under this Agreement.

EXPLANATION OF SERVICE OPTIONS

ORIGINATING 1+ DDD RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #1:** This option has been withdrawn.
- Option #2:** The Recording Company performs recording, assembly and editing of the billable message detail and extracts that detail to the IXC for all 1+ IXC transported messages originating from the CLEC end office. The Recording Company creates Access Usage Records for this traffic and forwards those AUR records to the CLEC.
- Option #3:** The Interexchange Carriers do own billable message recording for their 1+ IXC transported messages originating from the CLEC end office. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.

ORIGINATING OPERATOR RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL AND ACCESS USAGE RECORDS

- Option #4:** CLEC Non-Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for all 0+, 0-, Coin Sent Paid, CAMA and International IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #5:** CLEC Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for 0- only IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #6:** This option has been withdrawn.
- Option #7:** This option has been withdrawn.

800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL

- Option #8:** Recording Company performs SSP function for CLEC end office and bills query charge to the appropriate Interexchange Carrier. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to CLEC.
- Option #9:** This option has been withdrawn.
- Option #10:** Recording Company performs SCP function for CLEC. The Recording Company performs recording at the SCP, assembles and edits this data, creates SCP records and forwards SCP records to the CLEC.

TERMINATING RECORDINGS - IXC TRANSPORTED ACCESS USAGE RECORDS

- Option #11:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B, Feature Group C and Feature Group D terminating usage recordings including Feature Group B over D and Feature Group C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #12:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings excluding B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #13:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings including Feature Group B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #14:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D and C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option #15:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.

EXHIBIT II

INVOICE DESIGNATION

COMPANY NAME:

EXCHANGE COMPANY I.D. NUMBER (OCN):

BILLABLE INVOICE INTERVAL:

Check One:

Daily (Full Status RAO Companies will receive billable messages daily, Monday-Friday excluding holidays.)

Bill period (Please choose a maximum of five dates for AT&T SOUTHWEST REGION 5 STATE TEXAS. A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

AUR INVOICE INTERVAL:

Check One:

Daily (Full Status RAO Companies will receive AURs daily, Monday-Friday except holidays.)

Bill period (Please choose a maximum of five dates for AT&T SOUTHWEST REGION 5 STATE TEXAS. A file will be created approximately 3 to 5 workdays after the chosen bill date(s):

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

APPENDIX LAWFUL UNES (LAWFUL PROVISION OF ACCESS TO UNBUNDLED NETWORK ELEMENTS)

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APPENDIX LAWFUL UNES (LAWFUL PROVISION OF ACCESS TO UNBUNDLED NETWORK ELEMENTS)

1. INTRODUCTION

- 1.1 This Appendix Lawful UNES sets forth the terms and conditions pursuant to which the applicable AT&T Inc. (AT&T)-owned Incumbent Local Exchange Carrier (ILEC) will furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNES for the provision by CLEC of a Telecommunications Service ((Act, Section 251(c)(3)). For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.
- 1.2 **AT&T Inc. (AT&T)** means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications Inc. d/b/a AT&T-ALABAMA, d/b/a AT&T-FLORIDA, d/b/a AT&T-GEORGIA, d/b/a AT&T-KENTUCKY, d/b/a AT&T-LOUISIANA, d/b/a AT&T-MISSISSIPPI, d/b/a AT&T-NORTH CAROLINA, d/b/a AT&T-SOUTH CAROLINA and d/b/a AT&T-TENNESSEE, Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.3 ~~AT&T-STATE~~ means the AT&T-owned ILEC doing business in either Illinois or Texas. ~~AT&T-2STATE~~ As used herein, ~~AT&T-2STATE~~ means ~~AT&T-CALIFORNIA~~ and ~~AT&T-NEVADA~~, the applicable AT&T-owned ILEC(s) doing business in California and Nevada.
- 1.4 Intentionally Omitted. ~~AT&T-4STATE~~ As used herein, ~~AT&T-4STATE~~ means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, and AT&T Oklahoma the applicable AT&T-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.
- 1.5 Intentionally Omitted. ~~AT&T-7STATE~~ As used herein, ~~AT&T-7STATE~~ means ~~AT&T SOUTHWEST REGION 5-STATE, AT&T-CALIFORNIA~~ and ~~AT&T-NEVADA~~, the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.6 Intentionally Omitted. ~~AT&T-8STATE~~ As used herein, ~~AT&T-8STATE~~ means ~~AT&T SOUTHWEST REGION 5-STATE, AT&T-CALIFORNIA, AT&T-NEVADA~~ and ~~AT&T-CONNECTICUT~~ the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma and Texas.
- 1.7 Intentionally Omitted. ~~AT&T-10STATE~~ As used herein, ~~AT&T-10STATE~~ means ~~AT&T SOUTHWEST REGION 5-STATE~~ and ~~AT&T-MIDWEST REGION 5-STATE~~ an the applicable AT&T-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.
- 1.8 Intentionally Omitted. ~~AT&T-12STATE~~ As used herein, ~~AT&T-STATE~~ means ~~AT&T SOUTHWEST REGION 5-STATE, AT&T-MIDWEST REGION 5-STATE~~ and ~~AT&T-2STATE~~ the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.9 Intentionally Omitted. ~~AT&T-13STATE~~ As used herein, ~~AT&T-13STATE~~ means ~~AT&T SOUTHWEST REGION 5-STATE, AT&T-MIDWEST REGION 5-STATE, AT&T-2STATE~~ and ~~AT&T-CONNECTICUT~~ the applicable AT&T-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.10 Intentionally Omitted. ~~AT&T-ARKANSAS~~ As used herein, ~~AT&T-ARKANSAS~~ means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, the applicable AT&T-owned ILEC doing business in Arkansas.
- 1.11 Intentionally Omitted. ~~AT&T-CALIFORNIA~~ As used herein, ~~AT&T-CALIFORNIA~~ means Pacific Bell Telephone Company d/b/a AT&T California, the applicable AT&T-owned ILEC doing business in California.

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- 1.12 ~~Intentionally Omitted. **AT&T CONNECTICUT** - As used herein, **AT&T CONNECTICUT** means The Southern New England Telephone Company d/b/a AT&T Connecticut, the applicable above listed ILEC doing business in Connecticut.~~
- 1.13 ~~Intentionally Omitted. **AT&T KANSAS** - As used herein, **AT&T KANSAS** means Southwestern Bell Telephone Company d/b/a AT&T Kansas, the applicable AT&T owned ILEC doing business in Kansas.~~
- 1.14 **AT&T ILLINOIS** - As used herein, **AT&T ILLINOIS** means Illinois Bell Telephone Company d/b/a AT&T Illinois, the applicable AT&T-owned ILEC doing business in Illinois.
- 1.15 ~~Intentionally Omitted. **AT&T INDIANA** - As used herein, **AT&T INDIANA** means Indiana Bell Telephone Company incorporated d/b/a AT&T Indiana, the applicable AT&T owned ILEC doing business in Indiana.~~
- 1.16 ~~Intentionally Omitted. **AT&T MICHIGAN** - As used herein, **AT&T MICHIGAN** means Michigan Bell Telephone Company d/b/a AT&T Michigan, the applicable AT&T-owned ILEC doing business in Michigan.~~
- 1.17 ~~Intentionally Omitted. **AT&T MIDWEST REGION 5 STATE** - As used herein, **AT&T MIDWEST REGION 5 STATE** means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.~~
- 1.18 ~~Intentionally Omitted. **AT&T MISSOURI** - As used herein, **AT&T MISSOURI** means Southwestern Bell Telephone Company d/b/a AT&T Missouri, the applicable AT&T owned ILEC doing business in Missouri.~~
- 1.19 ~~Intentionally Omitted. **AT&T NEVADA** - As used herein, **AT&T NEVADA** means Nevada Bell Telephone Company d/b/a AT&T Nevada, the applicable AT&T owned ILEC doing business in Nevada.~~
- 1.20 ~~Intentionally Omitted. **AT&T OHIO** - As used herein, **AT&T OHIO** means The Ohio Bell Telephone Company d/b/a AT&T Ohio, the applicable AT&T owned ILEC doing business in Ohio.~~
- 1.21 ~~Intentionally Omitted. **AT&T OKLAHOMA** - As used herein, **AT&T OKLAHOMA** means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, the applicable AT&T owned ILEC doing business in Oklahoma.~~
- 1.22 ~~Intentionally Omitted. **AT&T SOUTHWEST REGION 5 STATE** - As used herein, **AT&T SOUTHWEST REGION 5 STATE** means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.~~
- 1.23 **AT&T TEXAS** - As used herein, **AT&T TEXAS** means Southwestern Bell Telephone Company d/b/a AT&T Texas, the applicable AT&T-owned ILEC doing business in Texas.
- 1.24 ~~Intentionally Omitted. **AT&T WISCONSIN** - As used herein, **AT&T WISCONSIN** means Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, the applicable AT&T owned ILEC doing business in Wisconsin.~~
- 1.25 The Prices at which ~~**AT&T STATE AT&T-1322 STATE**~~ agrees to provide electronic access to its Directory Assistance (DA) database are contained in the applicable Appendix Pricing and/or the applicable Commissioned ordered tariff where stated.

2. TERMS AND CONDITIONS

- 2.1 **Lawful UNEs and Declassification.** This Agreement sets forth the terms and conditions pursuant to which ~~**AT&T STATE AT&T-1322 STATE**~~ will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act in ~~**AT&T STATE AT&T-1322 STATE**~~'s incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, ~~**AT&T STATE AT&T-1322 STATE**~~ shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and

effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that ~~AT&T-STATEAT&T-1322STATE~~ is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs."

- 2.1.1 A network element, including a network element referred to as a Lawful UNE under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."
- 2.1.2 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified upon or by (a) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (b) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that an incumbent LEC is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act; or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Lawful UNE or be Declassified generally, or on an element-specific, route-specific or geographically-specific basis or on a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.
- 2.1.3 It is the Parties' intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1. If an element is not required to be provided under this Appendix Lawful UNE and/or not described in this Appendix Lawful UNE, it is the Parties' intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Appendix, Schedule or in the Pricing Appendix.
- 2.1.4 By way of example only, if terms and conditions of this Agreement state that ~~AT&T-STATEAT&T-1322STATE~~ is required to provide a Lawful UNE or Lawful UNE combination, and that Lawful UNE or the involved Lawful UNE (if a combination) is Declassified or otherwise no longer constitutes a Lawful UNE, then ~~AT&T-STATEAT&T-1322STATE~~ shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.
- 2.2 Nothing contained in the Agreement shall be deemed to constitute consent by ~~AT&T-STATEAT&T-1322STATE~~ that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that ~~AT&T-STATEAT&T-1322STATE~~ is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 2.3 The preceding includes without limitation that ~~AT&T-STATEAT&T-1322STATE~~ shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving ~~AT&T-STATEAT&T-1322STATE~~ network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 2.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is

Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.

2.5 Non-Impaired Wire Center Criteria and Related Processes

2.5.1 ~~AT&T STATE AT&T-1322 STATE~~ has designated and posted to CLEC Online the wire centers where it contends the thresholds for DS1 and DS3 Unbundled High-Capacity Loops as defined pursuant to Rule 51.319(a)(4) and Rule 51.319(a)(5) and for Tier 1 and Tier 2 Non-Impaired Wire Centers as defined pursuant to Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) have been met. ~~AT&T STATE AT&T-1322 STATE~~'s designations shall be treated as controlling (even if CLEC believes the list is inaccurate) for purposes of transition and ordering unless CLEC provides a self-certification as outlined below. Until CLEC provides a self-certification for High-Capacity Loops and/or Transport for such wire center designations, CLEC will not submit High Capacity Loop and/or Transport orders based on the wire center designation, and if no self-certification is provided will transition its Embedded Base of DS1 and DS3 Loop and Transport arrangements affected by the designation by disconnecting or transitioning to an alternate facility or arrangement, if available, by March 11, 2006. CLEC will transition any affected Dark Fiber Transport arrangements affected by the wire center designations by disconnecting or transitioning to an alternate facility or arrangement, if available, by September 11, 2006. ~~AT&T STATE AT&T-1322 STATE~~ will update the CLEC Online posted list and will advise CLECs of such posting via Accessible Letter, which term for the purposes of this Section 2.5 of this Agreement shall be deemed to mean an Accessible Letter issued after the effective date of this Agreement, as set forth in this Section 2.5 of this Agreement.

2.5.2 If the Commission has not previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then, prior to submitting an order for an unbundled a DS1/DS3 High-Capacity Loop, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangement, CLEC shall perform a reasonably diligent inquiry to determine that, to the best of CLEC's knowledge, whether the wire center meets the non-impairment thresholds as set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii). If, based on its reasonably diligent inquiry, the CLEC disputes the ~~AT&T STATE AT&T-1322 STATE~~ wire center non-impairment designation, the CLEC will provide a self-certification to ~~AT&T STATE AT&T-1322 STATE~~ identifying the wire center(s) for which it is self-certifying. In performing its inquiry, CLEC shall not be required to consider any lists of non-impaired Wire Centers compiled by ~~AT&T STATE AT&T-1322 STATE~~ as creating a presumption that a Wire Center is not impaired. CLEC can send a letter to ~~AT&T STATE AT&T-1322 STATE~~ claiming Self Certification or CLEC may elect to self-certify using a written or electronic notification sent to ~~AT&T STATE AT&T-1322 STATE~~. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, ~~AT&T STATE AT&T-1322 STATE~~ shall provision the requested facilities in accordance with CLEC's order and within ~~AT&T STATE AT&T-1322 STATE~~'s standard ordering interval applicable to such facilities. If ~~AT&T STATE AT&T-1322 STATE~~ in error rejects CLEC orders, where CLEC has provided self certification in accordance with this Section 2.5 of this Agreement, ~~AT&T STATE AT&T-1322 STATE~~ will modify its systems to accept such orders within 5 business hours of CLEC notification to its account manager. CLEC may not submit a self-certification for a wire center after the transition period for the DS1/DS3 Loops and/or DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport impacted by the designation of the wire center has passed.

2.5.3 The Parties recognize that wire centers that ~~AT&T STATE AT&T-1322 STATE~~ had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, may meet those thresholds in the future. In the event that a wire center that is not currently designated as meeting one or more of the FCC's non-impairment thresholds, meets one or more of these thresholds at a later date, ~~AT&T STATE AT&T-1322 STATE~~ may add the wire center to the list of designated wire centers and the Parties will use the following process:

2.5.3.1 ~~AT&T STATE AT&T-1322 STATE~~ may update the wire center list as changes occur.

- 2.5.3.2 To designate a wire center that had previously not met one or more of the FCC's impairment thresholds but subsequently does so, ~~AT&T STATE AT&T-1322 STATE~~ will provide notification to CLEC via Accessible Letter and by a posting on CLEC Online.
- 2.5.3.3 ~~AT&T STATE AT&T-1322 STATE~~ will continue to accept CLEC orders for impacted DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for 30 calendar days after the date the Accessible Letter is issued.
- 2.5.3.4 In the event the CLEC disagrees with ~~AT&T STATE AT&T-1322 STATE~~'s determination and CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute ~~AT&T STATE AT&T-1322 STATE~~'s determination regarding the wire center by providing a self-certification to ~~AT&T STATE AT&T-1322 STATE~~.
- 2.5.3.5 If the CLEC does not use the self-certification process described in this Section 2.5 of this Agreement to self-certify against ~~AT&T STATE AT&T-1322 STATE~~'s wire center designation within 60 calendar days of the issuance of the Accessible Letter, the Parties must comply with the Applicable Transitional Period as follows: transition all circuits that have been declassified by the wire center designation(s) within 30 days ending on the 90th day after the issuance of the Accessible Letter providing the wire center designation of non-impairment or the end of the applicable transition period described in Section 2.5.1 of this Agreement, whichever is later. For the Applicable Transitional Period, no additional notification will be required. CLEC may not obtain new DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in wire centers and/or routes where such circuits have been declassified during the applicable transition period.
- 2.5.3.6 If the CLEC does provide self-certification to dispute ~~AT&T STATE AT&T-1322 STATE~~'s designation determination within 60 calendar days of the issuance of the Accessible Letter, ~~AT&T STATE AT&T-1322 STATE~~ may dispute CLEC's self-certification as described in Sections 2.5.5 and 2.5.6 of this Agreement and ~~AT&T STATE AT&T-1322 STATE~~ will accept and provision the applicable loop and transport orders for the CLEC providing the self certification during a dispute resolution process.
- 2.5.3.7 During the applicable transition period, the rates paid will be the rates in effect at the time of the non-impairment designations plus 15%.
- 2.5.4 If the Commission has previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then CLEC shall not request DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements declassified by the non-impairment status of the wire center in such wire center. If a CLEC withdraws its self-certification after a dispute has been filed with the Commission, but before the Commission has made a determination regarding the wire center designation, the wire center designation(s) that were the subject of the dispute will be treated as though the Commission approved ~~AT&T STATE AT&T-1322 STATE~~'s designations.
- 2.5.5 If it desires to do so, ~~AT&T STATE AT&T-1322 STATE~~ can dispute the self-certification and associated CLEC orders for facilities pursuant to the following procedures: ~~AT&T STATE AT&T-1322 STATE~~ will notify the CLEC of its intent to dispute the CLEC's self-certification within 30 days of the CLEC's self-certification or within 30 days of the effective date of this Agreement, whichever is later. ~~AT&T STATE AT&T-1322 STATE~~ will file the dispute for resolution with the state Commission within 60 days of the CLEC's self-certification or within 60 days of the effective date of this Agreement, whichever is later. ~~AT&T STATE AT&T-1322 STATE~~ will notify CLECs of the filing of such a dispute via Accessible Letter. If the self-certification dispute is filed with the state Commission for resolution, the Parties will not oppose requests for intervention by other CLECs if

such request is related to the disputed wire center designation(s). The parties agree to urge the state Commission to adopt a case schedule resulting in the prompt resolution of the dispute. ~~AT&T-STATEAT&T-1322STATE~~'s failure to file a timely challenge, i.e., within 60 days of the CLEC's self-certification or within 60 days of the effective date of this Agreement, whichever is later, to any CLEC's self certification for a given wire center shall be deemed a waiver by ~~AT&T-STATEAT&T-1322STATE~~ of its rights to challenge any subsequent self certification for the affected wire center except as provided below. ~~AT&T-STATEAT&T-1322STATE~~ shall promptly notify CLEC of any time where ~~AT&T-STATEAT&T-1322STATE~~ has waived its ability to challenge a self-certification as to any wire center for carrier. ~~AT&T-STATEAT&T-1322STATE~~ may challenge future CLEC self-certifications pertaining to the wire center if the underlying facts pertaining to the designation of non-impairment have changed, in which case the Parties will follow the provisions for updating the wire center list outlined in Section 2.5.3 of this Agreement. During the timeframe of any dispute resolution proceeding, ~~AT&T-STATEAT&T-1322STATE~~ shall continue to provide the High-Capacity Loop or Transport facility in question to CLEC at the rates in the Pricing Appendix to the Agreement. If the CLEC withdraws its self-certification, or if the state Commission determines through arbitration or otherwise that CLEC was not entitled to the provisioned DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 251, the rates paid by CLEC for the affected loop or transport shall be subject to true-up as follows:

2.5.5.1 For wire centers designated by ~~AT&T-STATEAT&T-1322STATE~~ prior to March 11, 2005 and

2.5.5.1.1 For the affected loop/transport element(s) installed prior to March 11, 2005,

2.5.5.1.1.1 CLEC will provide a true-up calculated using a beginning date of March 11, 2005 based on the FCC transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider to this Agreement between March 11, 2005 and the end of the initial TRRO transition period described in Section 2.5.1. If affected loops/transport element(s) remain in place after the end of the initial TRRO transition period, CLEC will also provide a true-up for the period after the end of initial TRRO transition period calculated using the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider of this Agreement. The applicable equivalent special access rate/transitional rate as described above will continue to apply until the facility has been transitioned.

2.5.5.1.2 For the affected loop/transport element(s) installed after March 11, 2005, CLEC will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or thirty days after ~~AT&T-STATEAT&T-1322STATE~~'s notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Appendix or if applicable, Section 1.2 of the Embedded Base Rider of this Agreement. The applicable equivalent special access rate/transitional rate will continue to apply until the facility has been transitioned.

2.5.5.2 For wire centers designated by ~~AT&T-STATEAT&T-1322STATE~~ after March 11, 2005,

2.5.5.2.1 For affected loop/transport elements ordered before ~~AT&T-STATEAT&T-1322STATE~~'s wire center designation,

- 2.5.5.2.1.1 if the applicable transition period is within the initial TRRO transition period described in Section 2.5.1 of this Agreement, CLEC will provide a true-up during the period between the date that is thirty (30) days after ~~AT&T-STATEAT&T-1322STATE~~'s notice of non-impairment and the date the circuit is transitioned to the transitional rate described in Section 2.5.3.7 of this Agreement.
- 2.5.5.2.1.2 if the applicable transition period is after the initial TRRO transition period described in Section 2.5.1 of this Agreement has expired, CLEC will provide a true-up based on the transitional rate described in Section 2.5.3.7 of this Agreement between the date that is thirty (30) days after ~~AT&T-STATEAT&T-1322STATE~~'s notice of non-impairment and the end of the applicable transition period described in Section 2.5.1 and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Agreement. The applicable equivalent special access/transitional rate as described above will continue to apply until the facility has been transitioned.
- 2.5.5.2.2 For affected loop/transport elements ordered after ~~AT&T-STATEAT&T-1322STATE~~'s wire center designation, CLEC will provide a true-up for the affected loop/transport element(s) to an equivalent special access rate for the affected loop/transport element(s) as of the later of the date billing began for the provisioned element or thirty (30) days after ~~AT&T-STATEAT&T-1322STATE~~'s notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the transitional rate described in Section 2.5.3.7 of this Agreement. The applicable equivalent special access/transitional rate will continue to apply until the facility has been transitioned.
- 2.5.6 In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, ~~AT&T-STATEAT&T-1322STATE~~ will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which ~~AT&T-STATEAT&T-1322STATE~~ intends to rely, which will include the detailed business line information for the ~~AT&T-STATEAT&T-1322STATE~~ wire center or centers that are the subject of the dispute.
- 2.5.7 The provisions of Section 2.5.1 of this Agreement shall apply to the transition of DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements impacted by wire center designation(s). As outlined in Section 2.5.1 of this Agreement, requested transitions of DS1/DS3 High Capacity loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall be performed in a manner that reasonably minimizes the disruption or degradation to CLEC's customer's service, and all applicable charges shall apply. Cross-connects provided by ~~AT&T-STATEAT&T-1322STATE~~ in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (e.g., prior to transition, cross connects will be billed at transitional rates, after transition, if conversion is to an access product, cross connects will be billed at applicable access rates). Cross-connects that are not associated with such transitioned DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall not be re-priced.
- 2.5.8 ~~AT&T-STATEAT&T-1322STATE~~ will process CLEC orders for DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport conversion or disconnection. ~~AT&T-STATEAT&T-1322STATE~~ will not convert or disconnect these services prior to the end of the applicable transitional period unless specifically requested by the CLEC; however, CLEC is

responsible for ensuring that it submits timely orders in order to complete the transition by the end of applicable transitional period in an orderly manner.

- 2.5.9 A building that is served by both an impaired wire center and a non impaired wire center and that is not located in the serving area for the non-impaired wire center will continue to have Affected Elements available from the impaired wire center and support incremental moves, adds, and changes otherwise permitted by the Agreement, as amended.
- 2.5.10 CLEC may not self-certify that it is entitled to obtain DS1/DS3 Loops or DS1/DS3 Dedicated Transport at a location where CLEC has met the volume cap set forth in Sections 8.3.4.4.1 and 8.3.5.4.1 (for DS1/DS3 Loops) and 13.3.5.1 and 13.3.6.1 (for DS1/DS3 Dedicated Transport).
- 2.5.11 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the Applicable Transitional Period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 2.5.1 of this Agreement, and if CLEC and ~~AT&T-STATE AT&T-1322-STATE~~ have failed to reach agreement under Section 2.5.8 of this Agreement as to a substitute service arrangement or element, then ~~AT&T-STATE AT&T-1322-STATE~~ may, at its sole option, disconnect dark fiber element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available at rates applicable to such analogous service or arrangement.
- 2.6 ~~AT&T-STATE AT&T-1322-STATE~~ will provide access to Lawful UNEs for the provision by CLEC of a Telecommunications Service. (Act, Section 251(c)(3)).
- 2.7 ~~AT&T-STATE AT&T-1322-STATE~~ will provide CLEC nondiscriminatory access to Lawful UNEs (Act, Section 251(c)(3), Act, 47 CFR § 51.307(a)):
- 2.7.1 At any technically feasible point (Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.2 At the rates, terms, and conditions which are just, reasonable, and nondiscriminatory (Act, Section 251(c)(3); 47 CFR § 51.307(a));
- 2.7.3 In a manner that allows CLEC to provide a Telecommunications Service that may be offered by means of that Lawful UNE (Act, Section 251(c)(3); 47 CFR § 51.307 (c));
- 2.7.4 In a manner that allows access to the facility or functionality of a requested Lawful UNE to be provided separately from access to other elements, and for a separate charge (47 CFR § 51.307(d));
- 2.7.5 With technical information regarding ~~AT&T-STATE AT&T-1322-STATE~~'s network facilities to enable CLEC to achieve access to Lawful UNEs (47 CFR § 51.307(e));
- 2.7.6 Except as provided in this Appendix, without imposing limitations, restrictions, or requirements on requests for, or the use of, Lawful UNEs for the service CLEC seeks to offer (47 CFR § 51.309(a));
- 2.7.7 Where applicable, terms and conditions of access to Lawful UNEs shall be no less favorable than terms and conditions under which ~~AT&T-STATE AT&T-1322-STATE~~ provides such elements to itself (47 CFR § 51.31322(b));
- 2.7.8 Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2));
- 2.7.9 Except upon request of CLEC, ~~AT&T-STATE AT&T-1322-STATE~~ shall not separate CLEC-requested Lawful UNEs that are currently combined. (47 CFR § 51.315(b)) ~~AT&T-STATE AT&T-1322-STATE~~ is not prohibited from or otherwise limited in separating any Lawful UNEs not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a Lawful UNE(s) or other ~~AT&T-STATE AT&T-1322-STATE~~ offering(s).
- 2.8 As provided for herein, ~~AT&T-STATE AT&T-1322-STATE~~ will permit CLEC exclusive use of a Lawful UNE facility for a period of time, and when CLEC is purchasing access to a feature, function, or capability of such a facility, ~~AT&T-STATE AT&T-1322-STATE~~ will provide use of that feature, function, or capability for a period of time (47 CFR § 51.309(c)).

- 2.9 ~~AT&T-STATE AT&T-1322-STATE~~ will maintain, repair, or replace Lawful UNEs (47 CFR § 51.309(c)) as provided for in this Agreement.
- 2.10 To the extent technically feasible, the quality of the Lawful UNE and access to such Lawful UNE shall be at least equal to what ~~AT&T-STATE AT&T-1322-STATE~~ provides to itself and to other telecommunications carriers requesting access to the Lawful UNE (47 CFR § 51.311(a), (b)).
- 2.11 Each Party shall be solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 2.12 Lawful UNEs provided to CLEC under the provisions of this Appendix shall remain the property of ~~AT&T-STATE AT&T-1322-STATE~~.
- 2.13 Performance of Lawful UNEs
- 2.13.1 Each Lawful UNE will be provided in accordance with ~~AT&T-STATE AT&T-1322-STATE~~ Technical Publications or other written descriptions, if any, as changed from time to time by ~~AT&T-STATE AT&T-1322-STATE~~ at its sole discretion.
- 2.13.2 Nothing in this Appendix shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise or to otherwise change and/or modify its network including, without limitation, through the retirement and/or replacement of equipment, software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules"). ~~AT&T-STATE AT&T-1322-STATE~~ will not discontinue any Lawful UNE that ~~AT&T-STATE AT&T-1322-STATE~~ is required to provide to CLEC under this Agreement unless and until: (i) ~~AT&T-STATE AT&T-1322-STATE~~ provides requisite notice of the planned network change and/or modification in accordance with the Network Disclosure Rules (when applicable) and no objection is made to ~~AT&T-STATE AT&T-1322-STATE~~'s proposed network modification(s) and/or change(s) or any objection(s) is denied or deemed denied under such Rules; or (ii) if and when applicable, following ~~AT&T-STATE AT&T-1322-STATE~~'s exercise of its rights under applicable law and/or this Agreement including, without limitation, the intervening law/change in law provisions in this Agreement; or (iii) to the extent otherwise permitted in this Agreement.
- 2.13.3 ~~AT&T-STATE AT&T-1322-STATE~~ may elect to conduct upgrades or conversions for the improvement of its network or systems. During such upgrades or conversions, CLEC orders for Lawful UNEs from affected wire center(s) may be suspended for a period of a few days prior and one day after the upgrade or conversion date, consistent with the suspension ~~AT&T-STATE AT&T-1322-STATE~~ places on itself for orders from its End Users and other CLEC customers.
- 2.13.4 CLEC will be solely responsible, at its own expense, for the overall design of its Telecommunications Services and for any redesigning or rearrangement of its Telecommunications Services which may be required because of changes in facilities, operations, or procedure of ~~AT&T-STATE AT&T-1322-STATE~~ minimum network protection criteria, or operating or maintenance characteristics of the facilities.
- 2.14 Conditions for Access to Lawful UNEs
- 2.14.1 In order to access and use Lawful UNEs, CLEC must be a Telecommunications Carrier (Section 251(c)(3)), and must use the Lawful UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)) as permitted by the FCC. Together, these conditions are the "Statutory Conditions" for access to Lawful UNEs. Accordingly, CLEC hereby represents and warrants that it is a Telecommunications Carrier and that it will notify ~~AT&T-STATE AT&T-1322-STATE~~ immediately in writing if it ceases to be a Telecommunications Carrier. Failure to so notify ~~AT&T-STATE AT&T-1322-STATE~~ shall constitute material breach of this Agreement.
- 2.14.1.1 By way of example, use of a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or

otherwise) to provide service to CLEC or for other administrative purpose(s) does not constitute using a Lawful UNE pursuant to the Statutory Conditions.

2.14.1.2 By way of further example, CLEC may not access Lawful UNEs for the exclusive provision of mobile wireless services, or long distance services or interexchange services (telecommunications service between different stations in different exchange areas).

2.14.2 Other conditions to accessing and using any Lawful UNE (whether on a stand-alone basis, in combination with other Lawful UNEs, with a network element possessed by CLEC, or otherwise) may be applicable under lawful and effective FCC rules and associated lawful and effective FCC and judicial orders and will also apply.

2.15 New Combinations Involving Lawful UNEs

2.15.1 Subject to the provisions hereof and upon CLEC request, ~~AT&T-STATEAT&T-1322STATE~~ shall meet its combining obligations involving Lawful UNEs as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. 467 (May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.

2.15.1.1 Any combining obligation is limited solely to combining of Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that ~~AT&T-STATEAT&T-1322STATE~~ might offer pursuant to Section 271 of the Act.

2.15.2 In the event that ~~AT&T-STATEAT&T-1322STATE~~ denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, ~~AT&T-STATEAT&T-1322STATE~~ shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, ~~AT&T-STATEAT&T-1322STATE~~ shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.15 of this Appendix.

2.15.3 In accordance with and subject to the provisions of this Section 2.15, including Section 2.15.3.2 and 2.15.5, the new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.

2.15.3.1 The Parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as ~~AT&T-STATEAT&T-1322STATE~~ being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, ~~AT&T-STATEAT&T-1322STATE~~ is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:

2.15.3.1.1 Section 2.15, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, ~~AT&T-STATEAT&T-1322STATE~~ from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such

rights, remedies, and arguments are expressly reserved by ~~AT&T-STATEAT&T-1322STATE~~. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect ~~AT&T-STATEAT&T-1322STATE~~ from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.

- 2.15.3.1.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, ~~AT&T-STATEAT&T-1322STATE~~ shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.15.3.1.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.15.3.1.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.
- 2.15.3.1.3 Without affecting the application of Section 2.15.3.1.2 (which shall apply in accordance with its provisions), upon notice by ~~AT&T-STATEAT&T-1322STATE~~, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any ~~AT&T-STATEAT&T-1322STATE~~ obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the Parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.
- 2.15.3.2 A new Lawful UNE combination, if any, listed on a Schedule – Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.
- 2.15.3.3 For a new Lawful UNE combination, if any, listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by ~~AT&T-STATEAT&T-1322STATE~~, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.
- 2.15.3.4 Upon notice by ~~AT&T-STATEAT&T-1322STATE~~, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by ~~AT&T-STATEAT&T-1322STATE~~ in providing the new Lawful UNE combinations, if any, set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 2.16.3.3. For any such work done by ~~AT&T-STATEAT&T-1322STATE~~ under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by ~~AT&T-STATEAT&T-1322STATE~~, any such fee(s) shall be at a market-based rate. If those negotiations do not

reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

- 2.15.4 In accordance with and subject to the provisions of this Section 2.15, any request not included in Section 2.15.3 in which CLEC wants ~~AT&T-STATEAT&T-1322STATE~~ to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC (as well as requests where CLEC also wants ~~AT&T-STATEAT&T-1322STATE~~ to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.
- 2.15.4.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined and the needed location(s), the order in which the Lawful UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an ~~AT&T-STATEAT&T-1322STATE~~ Lawful UNE and the lawful network element(s) possessed by CLEC.
- 2.15.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by ~~AT&T-STATEAT&T-1322STATE~~ under Section 2.15.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. ~~AT&T-STATEAT&T-1322STATE~~'s Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests ~~AT&T-STATEAT&T-1322STATE~~ to perform work not required by Section 2.15.1, CLEC shall be charged a market-based rate for any such work.
- 2.15.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.15 apply only in situations where each of the following is met:
- 2.15.5.1 it is technically feasible, including that network reliability and security would not be impaired;
- 2.15.5.2 ~~AT&T-STATEAT&T-1322STATE~~'s ability to retain responsibility for the management, control, and performance of its network would not be impaired;
- 2.15.5.3 ~~AT&T-STATEAT&T-1322STATE~~ would not be placed at a disadvantage in operating its own network;
- 2.15.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with ~~AT&T-STATEAT&T-1322STATE~~'s network; and
- 2.15.5.5 CLEC is
- 2.15.5.5.1 unable to make the combination itself; or
- 2.15.5.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 2.15.5.5 ceases if ~~AT&T-STATEAT&T-1322STATE~~ informs CLEC of such need to combine.
- 2.15.6 For purposes of Section 2.15.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without limitation:
- 2.15.6.1 at an ~~AT&T-STATEAT&T-1322STATE~~ premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;
- 2.15.6.2 ~~Intentionally Omitted for AT&T-CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.~~

2.15.7 Section 2.15.5.5 shall only begin to apply thirty (30) days after notice by ~~AT&T-STATEAT&T-1322STATE~~ to CLEC. Thereafter, ~~AT&T-STATEAT&T-1322STATE~~ may invoke Section 2.15.5.5 with respect to any request for a combination involving Lawful UNEs.

2.16 Conversion of Wholesale Services to Lawful UNEs

2.16.1 Upon request, ~~AT&T-STATEAT&T-1322STATE~~ shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the Lawful UNEs, or combination of Lawful UNEs, that would result from the conversion meet the eligibility criteria that may be applicable. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)

2.16.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, ~~AT&T-STATEAT&T-1322STATE~~ will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

2.16.3 Except as agreed to by the Parties or otherwise provided hereunder, ~~AT&T-STATEAT&T-1322STATE~~ shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. ~~AT&T-STATEAT&T-1322STATE~~ may charge applicable service order charges and record change charges.

2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Appendix.

2.16.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), ~~AT&T-STATEAT&T-1322STATE~~ may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.

2.16.5.1 This Section 2.16.5 applies to any Lawful UNE or combination of Lawful UNEs, including whether or not such Lawful UNE or combination of Lawful UNEs had been previously converted from an ~~AT&T-STATEAT&T-1322STATE~~ service.

2.16.5.2 ~~AT&T-STATEAT&T-1322STATE~~ may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.

2.16.6 In requesting a conversion of an ~~AT&T-STATEAT&T-1322STATE~~ service, CLEC must follow the guidelines and ordering requirements provided by ~~AT&T-STATEAT&T-1322STATE~~ that are applicable to converting the particular ~~AT&T-STATEAT&T-1322STATE~~ service sought to be converted.

2.16.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects ~~AT&T-STATEAT&T-1322STATE~~'s ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

2.17 Commingling

2.17.1 "Commingling" means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC has obtained at wholesale from ~~AT&T-STATEAT&T-1322STATE~~, or the combining of a Lawful UNE, or a

- combination of Lawful UNEs, with one or more such facilities or services. "Commingle" means the act of commingling.
- 2.17.1.1 "Commingled Arrangement" means the arrangement created by Commingling.
- 2.17.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an AT&T-STATEAT&T-1221STATE offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).
- 2.17.1.3 Commingling is not permitted, nor is AT&T-STATEAT&T-1322STATE required to perform the functions necessary to Commingle, where the Commingled Arrangement (i) is not technically feasible, including that network reliability and security would be impaired; or (ii) would impair AT&T-STATEAT&T-1322STATE's ability to retain responsibility for the management, control, and performance of its network; or (iii) would place AT&T-STATEAT&T-1322STATE at a disadvantage in operating its own network; or (iv) would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with AT&T-STATEAT&T-1322STATE's network.
- 2.17.1.4 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, AT&T-STATEAT&T-1322STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.17.1.5 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from AT&T-STATEAT&T-1322STATE with Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that AT&T-STATEAT&T-1221STATE might offer pursuant to Section 271 of the Act.
- 2.17.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, AT&T-STATEAT&T-1322STATE shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from AT&T-STATEAT&T-1322STATE to the extent required by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.
- 2.17.3 Upon request, and subject to this Section 2, AT&T-STATEAT&T-1322STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from AT&T-STATEAT&T-1322STATE (as well as requests where CLEC also wants AT&T-STATEAT&T-1322STATE to complete the actual Commingling), except that AT&T-STATEAT&T-1322STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) Section 2.17.1.3 applies to the Commingled Arrangement sought by CLEC; or (ii) the CLEC is able to perform those functions itself. Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, AT&T-STATEAT&T-1322STATE's obligation to commingle ceases if AT&T-STATEAT&T-1322STATE informs CLEC of such need to Commingle.
- 2.17.3.1 For purposes of Section 2.17.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from AT&T-STATEAT&T-1322STATE are available to CLEC, including without limitation:
- 2.17.3.1.1 at an AT&T-STATEAT&T-1322STATE central office where CLEC is physically collocated or has an on-site adjacent collocation arrangement;
- 2.17.3.1.2 Intentionally Omitted for AT&T-CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.

- 2.17.3.2 Section 2.17.3(ii) shall only begin to apply thirty (30) days after notice by ~~AT&T-STATEAT&T-1322STATE~~ to CLEC. Thereafter, ~~AT&T-STATEAT&T-1322STATE~~ may invoke Section 2.17.3(ii) with respect to any request for Commingling.
- 2.17.4 In accordance with and subject to the provisions of this Section 2.17, any request by CLEC for ~~AT&T-STATEAT&T-1322STATE~~ to perform the functions necessary to Commingle (as well as requests where CLEC also wants ~~AT&T-STATEAT&T-1322STATE~~ to complete the actual Commingling), shall be made by CLEC in accordance with this Agreement.
- 2.17.4.1 ~~AT&T-STATEAT&T-1322STATE~~ is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.
- 2.17.4.2 Any CLEC request for a Commingled Arrangement not found on the then-existing list of orderable Commingled Arrangements must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNEs, and the facilities or services that CLEC has obtained at wholesale from ~~AT&T-STATEAT&T-1322STATE~~ sought to be Commingled and the needed location(s), the order in which such Lawful UNEs, such combinations of Lawful UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.
- 2.17.4.2.1 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by ~~AT&T-STATEAT&T-1322STATE~~ under this Section 2.17 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. ~~AT&T-STATEAT&T-1322STATE~~'s Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests ~~AT&T-STATEAT&T-1322STATE~~ to perform work not required by this Section 2.17.4, CLEC shall be charged a market-based rate for any such work.
- 2.17.4.3 ~~AT&T-STATEAT&T-1322STATE~~ shall charge the appropriate non-recurring rates as set forth in the pricing schedule(s) applicable to the Lawful UNEs (or Lawful UNE combinations) that are Commingled on a Lawful UNE-by-Lawful UNE basis, and for the facilities and services that are Commingled (under this Section 2) on a facility-by-facility, service-by-service basis, including without limitation for the type of service and activity being requested to create the Commingled Arrangement.
- 2.17.5 ~~AT&T-STATEAT&T-1322STATE~~ shall not be required to, and shall not, provide "ratcheting" as a result of Commingling or a Commingled Arrangement. As a general matter, "ratcheting" is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate. ~~AT&T-STATEAT&T-1322STATE~~ shall charge the rates for Lawful UNEs (or Lawful UNE combinations) Commingled with facilities or services obtained at wholesale (including for example special access services) on an element-by-element basis, and such facilities and services on a facility-by-facility, service-by-service basis.
- 2.17.6 Nothing in this Agreement shall impose any obligation on ~~AT&T-STATEAT&T-1322STATE~~ to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The preceding includes without limitation that ~~AT&T-STATEAT&T-1322STATE~~ shall not be obligated to Commingle network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason,

sloping meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.

2.17.7 In the event that Commingling also involves ~~AT&T-STATEAT&T-1322STATE~~ performing the functions necessary to combine Lawful UNES (e.g., make a new combination of Lawful UNES), including making the actual Lawful UNE combination, then Section 2.16 shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement.

2.17.8 Subject to this 2.17, ~~AT&T-STATEAT&T-1322STATE~~ shall not deny access to a Lawful UNE or a combination of Lawful UNES on the grounds that one or more of the Lawful UNES is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from ~~AT&T-STATEAT&T-1322STATE~~.

2.17.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, ~~AT&T-STATEAT&T-1224STATE~~'s obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass ~~AT&T-STATEAT&T-1224STATE~~ offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNES under 47 U.S.C. § 251(c)(3).

2.18 Mandatory Eligibility Criteria for Access to Certain Lawful UNES

2.18.1 Except as provided below in this Section 2.18 or elsewhere in the Agreement and subject to this Section and Section 2.16, Conversion of Wholesale Services to UNES, of this Appendix, ~~AT&T-STATEAT&T-1322STATE~~ shall provide access to UNES and combinations of UNES without regard to whether the CLEC seeks access to the UNES to establish a new circuit or to convert an existing circuit from a service to UNES.

2.18.1.1 "Enhanced Extended Link" or "EEL" means a UNE combination consisting of an unbundled loop(s) and Unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNES (including, for example, multiplexing capabilities). An DS1 or higher EEL is required to terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix (e.g., the end of the Unbundled Dedicated Transport that is opposite the end connected to the UNE local loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).

2.18.2 ~~AT&T-STATEAT&T-1322STATE~~ is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:

2.18.2.1 CLEC (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.18.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS3 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:

2.18.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within

an ~~AT&T-STATEAT&T-1322STATE~~ local service area and within the LATA where the circuit is located ("Local Telephone Number"), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification); and

- 2.18.2.2.2 Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
- 2.18.2.2.3 Each circuit to be provided to each End User will have 911 or E911 capability prior to the provision of service over that circuit; and
- 2.18.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE; and
- 2.18.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix Lawful UNE; and
- 2.18.2.2.6 For each 24 DS1 EELs, or other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 2.18.4 of this Appendix; and
- 2.18.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, ~~AT&T-STATEAT&T-1322STATE~~ shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE. Section 2.18.2 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 2.18.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

- 2.18.3 A collocation arrangement meets the requirements of Section 2.18 of this Appendix Lawful UNE if it is:
 - 2.18.3.1 Established pursuant to Section 251(c)(6) of the Act and located at ~~AT&T-STATEAT&T-1322STATE~~'s premises within the same LATA as the End User's premises, when ~~AT&T-STATEAT&T-1322STATE~~ is not the collocator; or
 - 2.18.3.2 Located at a third party's premises within the same LATA as the End User's premises, when ~~AT&T-STATEAT&T-1322STATE~~ is the collocator.
- 2.18.4 An interconnection trunk meets the requirements of Sections 2.18.2.2.5 and 2.18.2.2.6 of this Appendix Lawful UNE if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk, and the trunk is located in the same LATA as the End User premises served by the Included Arrangement.

- 2.18.5 For a new circuit to which Section 2.18.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.18.2.1 and Section 2.18.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.18.2.2.1 and/or Section 2.18.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after AT&T-STATE AT&T-1322 STATE provisions such new circuit. CLEC must provide AT&T-STATE AT&T-1322 STATE with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.
- 2.18.5.1 Section 2.18.5 does not apply to existing circuits to which Section 2.18.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.18.2.2.1 and Section 2.18.2.2.3 requirements for existing circuits at the time it initiates the ordering process).
- 2.18.6 CLEC hereby agrees that by submitting an order to AT&T-STATE AT&T-1322 STATE for an Included Arrangement (whether new, as a result of a requested conversion, or otherwise), CLEC is certifying that it meets and will continue to meet the requirements of Section 2.18 as to such Included Arrangement(s) on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. Such certification-by-order shall have the same weight and effect as a separate certification, and certification-by-order shall not diminish or otherwise affect CLEC's obligation to meet and to continue to comply with the criteria or certification requirements set forth in this Section 2.18.
- 2.18.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with AT&T-STATE AT&T-1322 STATE.
- 2.18.7 In addition to any other audit rights provided for this Agreement and those allowed by law, AT&T-STATE AT&T-1322 STATE may obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance with this Section 2.18. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon AT&T-STATE AT&T-1322 STATE's written notice that an audit will be performed for that State, subject to Section 2.18.7.4 of this Section.
- 2.18.7.1 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria.
- 2.18.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.18.
- 2.18.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.
- 2.18.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 2.18, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services, (and AT&T-STATE AT&T-1322 STATE may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to AT&T-STATE AT&T-1322 STATE. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any UNE for any period in which CLEC does not meet the conditions

set forth in this Section 2.18 for that UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, e.g., ~~AT&T-STATEAT&T-1322STATE~~ shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.

2.18.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.18, CLEC must reimburse ~~AT&T-STATEAT&T-1322STATE~~ for the cost of the independent auditor and for ~~AT&T-STATEAT&T-1322STATE~~'s costs in the same manner and using the same methodology and rates that ~~AT&T-STATEAT&T-1322STATE~~ is required to pay CLEC's costs under Section 2.18.7.4.2.

2.18.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.18, ~~AT&T-STATEAT&T-1322STATE~~ must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).

2.18.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.

2.18.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 2.18 in all cases and, further, the failure of ~~AT&T-STATEAT&T-1322STATE~~ to require such compliance, including if ~~AT&T-STATEAT&T-1322STATE~~ provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.18, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.

- 2.19 Where processes for any Lawful UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, ~~AT&T-STATEAT&T-1322STATE~~ will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.20 ~~AT&T-STATEAT&T-1322STATE~~ will combine Lawful UNEs, combine Lawful UNE(s) with network elements possessed by CLEC, and/or Commingle only as set forth in this Appendix Lawful UNEs.
- 2.21 The Parties intend that this Appendix Lawful UNEs contains the sole and exclusive terms and conditions by which CLEC will obtain Lawful UNEs from ~~AT&T-STATEAT&T-1322STATE~~. Accordingly, except as may be specifically permitted by this Appendix Lawful UNEs, and then only to the extent permitted, CLEC and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any ~~AT&T-STATEAT&T-1322STATE~~ tariff, to the extent such tariff(s) is/are available, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of ~~AT&T-STATEAT&T-1322STATE~~ to enforce the foregoing (including if ~~AT&T-STATEAT&T-1322STATE~~ fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, ~~AT&T-STATEAT&T-1322STATE~~ may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, ~~AT&T-STATEAT&T-1322STATE~~ may process any such order as being submitted under this Appendix Lawful UNEs and, further, may convert any element provided under tariff, to this Appendix Lawful UNEs, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by CLEC.