

_____ AMENDMENT **OFFICIAL FILE**
I.C.C. DOCKET NO. 09-0052
to the AT&T Cross Exhibit No. 3
INTERCONNECTION AGREEMENTS Schuler
by and between Date 4/1/09 Reporter AAS

ILLINOIS BELL TELEPHONE COMPANY D/B/A SBC ILLINOIS

AND

BITWISE COMMUNICATIONS, INC.

The Interconnection Agreement ("the Agreement") by and between Illinois Bell Telephone Company d/b/a SBC Illinois¹ ("SBC Illinois") and BitWise Communications, Inc. ("BitWise"), executed August 27, 2001 and approved by the Illinois Commerce Commission is hereby amended as follows:

1.0 AMENDMENTS TO THE AGREEMENT

1.1 Appendix NIM of the Agreement is amended by adding the following:

7.0 Out of Exchange Traffic

- 7.1 SBC Illinois will use commercially reasonable efforts to open BitWise current and future NPA-NXX codes in SBC Illinois's network, that are assigned to a non SBC Illinois Incumbent exchange ("out of area exchanges").
- 7.2 The Parties agree to utilize the Interconnection architecture established by the terms and conditions in the underlying Interconnection Agreement. Given that BitWise operates as a CLEC within SBC Illinois exchange areas and has a switch and/or a point of interconnection located within SBC Illinois exchange areas for the purpose of providing telephone exchange service and exchange access in such SBC Illinois exchange areas, the Parties agree that SBC ILECs originating traffic will be delivered to BitWise's existing POI arrangements in the LATA where the traffic originates in accordance with the POI requirements set forth in BitWise's underlying Agreement. SBC Illinois will accept up to a DS1 (24 DS0s) level of traffic at its tandem switch to or from out of area exchanges over local

¹ Illinois Bell Telephone Company ("Illinois Bell"), an Illinois corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Illinois Bell offers telecommunications services and operates under the names "SBC Illinois" and "SBC Ameritech Illinois", pursuant to assumed name filings with the State of Illinois. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

interconnection facilities between the Parties that currently exist or may exist in the future. When such out of area traffic is Transit Traffic, as defined in the underlying Agreement, BitWise agrees to establish direct end office trunks to any third party carrier's end office when, each month, for a period of three consecutive months, traffic levels exceed one DS1 (24 DS0s) to or from that end office. When such out of area traffic is Local Traffic that is exchanged between the end users of BitWise and SBC Illinois, the Parties agree to establish direct end office trunks as specified in the Parties' Interconnection Agreement.

2.0 General Terms and Condition of the Agreement is amended by adding the following:

2.12.2 The CLEC's current Interconnection Agreement sets forth the terms and conditions pursuant to which SBC Illinois agrees to provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC Illinois 's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC Illinois is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC Illinois 's incumbent local exchange areas. SBC Illinois has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC Illinois 's incumbent local exchange areas. In addition, SBC Illinois is not obligated to provision UNEs or to provide access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC Illinois 's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in SBC Illinois's current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the parties and be available to CLEC Telecommunication services within an SBC Illinois incumbent local exchange area(s) in the State in which CLEC's-current Interconnection

Agreement with SBC Illinois has been approved by the relevant State Commission and is in effect..

- 2.12.3 The compensation arrangements for traffic exchanged between the Parties shall be as set forth in the Parties' Interconnection Agreement.

3.0 MISCELLANEOUS

- 3.1 This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, nor Interconnection and Trunking Terms, but rather, this Amendment shall be coterminous with such Agreement.
- 3.2 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT AND INTERCONNECTION AND TRUNKING TERMS SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
- 3.3 This Amendment shall be filed by SBC Illinois and is subject to approval by the Illinois Commerce Commission (IL-CC), and shall become effective ten (10) days following approval by the IL-CC.
- 3.4 In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA decision*"); the FCC's Triennial Review Order, adopted on February 20, 2003, on remand from the *USTA* decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("*ISP Compensation Order*"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("*Illinois Law*"). On May 9, 2003, the Public Utilities Act of Illinois was amended to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("*Illinois Law*"). The Illinois

Law establishes a specific method for setting certain UNE rates in Illinois, mandates that the Illinois Commerce Commission (“ICC”) apply the method and determine the rates (“ICC Rates”), and expressly deems all interconnection agreements to be amended to contain the ICC Rates immediately upon the ICC's announcement of such adjusted rates, without further action. Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings and the Illinois Law, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, SBC Illinois reserves its right, to the extent SBC Illinois has not already invoked the FCC ISP terminating compensation in Missouri and incorporated the rates, terms and conditions of such plan into this Agreement, to exercise its option at any time to adopt on a date specified by SBC Illinois the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding, finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party (“Written Notice”). In addition, to the extent this Agreement is in effect in Illinois, the Parties agree that any ICC orders implementing the Illinois Law, including, without limitation, the ICC Rates, shall automatically apply to this Agreement (for the state of Illinois only) as of the effective date of any such order(s) upon Written Notice, and as soon as practical thereafter, SBC Illinois shall begin billing CLEC the ICC Rates; provided, however, the Parties acknowledge and agree that no later than sixty (60) days from the Written Notice, the Parties will execute a conforming Amendment to this Agreement so that the Agreement accurately reflects the ICC Rates and SBC Illinois will issue any adjustments, as needed, to reflect that the ICC Rates became effective between the Parties as of the effective date of the applicable ICC order(s). With respect to all other Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions

required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 18th day of AUGUST, 2003, by SBC Illinois, signing by and through its duly authorized representative, and BitWise, signing by and through its duly authorized representative.

BitWise Communications, Inc.

**Illinois Bell Telephone Company
d/b/a SBC Illinois by SBC
Telecommunications, Inc., its
authorized agent**

By: [Signature]

By: [Signature]

Title: CEO

Title: For/President-Industry Markets

Name: Michael Shuler
(Print or Type)

Name: Mike Auinbauh
(Print or Type)

Date: 8/14/03

Date: AUG 18 2003