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FILE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF OHIO

INFOTELECOM, LLC

Complainant,

v.

Ohio Bell Telephone Company
D/B/A AT&T Ohio

Respondent.

Case No. 11-4887-TP-CSS

COMPLAINT

COMES NOW, Infotelecom, LLC ("Infotelecom"), by and through its undersigned counsel, and pursuant to Ohio Revised Code ("ORC"), Title 49, Sections 4905.041, 4905.22, 4905.26, 4905.33, 4905.35, 4905.37, 4927.04, 4927.16, and 4927.21 and Ohio Administrative Code ("OAC"), Rules 4901-9-01, 4901:1-7-28 and 4901:1-7-29, and files this Complaint against Ohio Bell Telephone Company d/b/a AT&T Ohio at the Public Utilities Commission of Ohio ("Commission") seeking resolution of a dispute regarding the appropriate interpretation of an Interconnection Agreement between Infotelecom and AT&T Ohio and the Commission's intervention to prevent AT&T Ohio from taking any action to disconnect service to Infotelecom. In support of thereof, Infotelecom states as follows:

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I. SUMMARY AND BACKGROUND

1. This matter involves a scheme by AT&T Ohio to exploit its status as the sole provider of local phone services to certain customers in Ohio in order to extort millions of dollars in payments from Infotelecom to which it is not entitled.

2. Infotelecom is a competitive provider of communications services that specializes in carrying voice traffic originating on an internet network in Internet Protocol (“IP”) format and carrying that traffic for termination at points on the public switched telephone network (“PSTN”). It is the carrier of choice for many of the nation’s most innovative and fastest growing technologies that blend the world of traditional voice communications with the advanced features and functionality made possible by the growth of broadband Internet.

3. In order to provide its services, Infotelecom enters into contractual agreements with a number of other communications carriers whereby the parties agree to terms and conditions for the mutual exchange of communications traffic. As relevant to this dispute, Infotelecom is party to an Interconnection Agreement (“ICA”) with AT&T Ohio through which the parties have agreed to exchange communications traffic. *See* Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 , attached hereto as Exhibit A (the “13-State ICA”); *see also* First Amendment Superseding Certain Intercarrier Compensation, Interconnection and Trunking Provisions, attached hereto as Exhibit B (the “First Amendment”).

4. Under the First Amendment, Infotelecom is required to pay a rate of \$0.00035 for all traffic that originates in IP protocol and is delivered to AT&T Ohio for termination on the PSTN, which is virtually all of the traffic Infotelecom carries on its network. Infotelecom also performs a monthly calculation to determine the amount that Infotelecom would have paid for

this traffic, had such traffic been traditional telecommunications traffic subject to tariffed switched access charges (the "Delta"). In the unlikely event that the monthly Delta with regard to AT&T Ohio exceeds \$500,000, the First Amendment requires Infotelecom and AT&T Ohio to undertake good faith negotiations about a resolution of the Delta and, if those negotiations are unsuccessful, for Infotelecom to escrow the Delta until such time as the Federal Communications Commission resolves the long-standing dispute about whether such traffic is subject to any intercarrier compensation obligations. Relying on an erroneous interpretation of the First Amendment, AT&T Ohio demanded that Infotelecom escrow millions of dollars, despite the fact that Infotelecom has *never* met this monthly trigger.

5. Because Infotelecom has refused to give into these unreasonable demands, the AT&T Ohio threatens to terminate the ICA and to cease all services to Infotelecom as of September 1, 2011. In so doing, AT&T Ohio violates the ICA and its duties under the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act").

6. Because service to customers across the state would be disrupted if AT&T Ohio is permitted to follow through on its unlawful scheme, Infotelecom has been forced to initiate litigation in an effort to prevent this harm. It seeks regulatory relief preventing any disruption of service, and resolution regarding the appropriate interpretation of the escrow provision in the ICA, confirming that Infotelecom is not required to pay Defendant the millions of dollars that it wrongly seeks.

7. Despite the efforts of Infotelecom to resolve this dispute with AT&T in a business-to-business manner, the parties have not been able to reach agreement. However, further efforts to resolve this dispute informally continue and Infotelecom believes may be aided by the Commission through the form of mediation or otherwise, so long as Infotelecom is not

negotiating under threat that its services will be wrongfully terminated. Accordingly, Infotelecom hereby seeks relief from the Commission to resolve this controversy by filing this complaint.

II. PARTIES AND JURISDICTION

8. Plaintiff Infotelecom, LLC is a Delaware Limited Liability Company that is in the business of, among other things, providing interstate and intrastate telecommunications services to various customers. Infotelecom was granted a certificate to provide basic local exchange service in Case No. 04-1886-TP-ACE.

9. The address and telephone number of Infotelecom is as follows:

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Cleveland, Ohio 44115
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Complainant is represented in this matter by the following attorneys:

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10. Respondent Ohio Bell Telephone Company D/B/A AT&T Ohio, with its principal place of business in Cleveland, Ohio. AT&T Ohio is an ILEC.

11. The address and telephone number of AT&T is:

45 Erieview Plaza
Cleveland, OH 44114
(800) 257-0902

On information and belief, AT&T is being represented in this matter by:

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12. AT&T Ohio is subject to the jurisdiction of the Commission pursuant to ORC Sections 4905.04, 4905.05, 4905.06 and 4927.04.

13. The Commission has jurisdiction over the subject matter of this Complaint pursuant to ORC Sections 4905.04, 4905.041, 4905.05, 4905.06, 4905.22, 4905.26, 4905.33, 4905.35, 4905.37, 4927.04, 4927.16 and 4927.21.

14. The Commission has jurisdiction to provide the relief requested herein pursuant to ORC Sections 4905.04, 4905.05, 4905.06, 4905.22, 4905.26, 4905.33, 4905.35, 4905.37, 4927.21, 4927.04, 4927.16, and various other provisions of Title 49 of the Ohio Revised Code.

III. STATEMENT OF FACTS

A. Regulatory Background

15. The Act was adopted in 1996 “to promote competition and reduce regulation in order to secure lower prices and higher quality of services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Telecommunications Act of 1996, Preamble, Pub. L. No. 104-404, 110 Stat. 56 (1996). The Act creates a “precompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” H.R. Rep. No. 104-458, at 113 (1996), *as reprinted in* 1996 U.S.C.C.A.N. 10.

16. The Act opened the local telephone marketplace to competition. Following the Act, the telephone market place is primarily comprised of three types of carriers: ILECs, those local telephone companies that possessed a monopoly in a given geographic area before the passage of the 1996 Act; Competitive Local Exchange Carriers (“CLECs”), local telephone companies that were created after the 1996 Act and compete with the ILECs; and Interexchange Carriers (“IXCs”), which are commonly known as long distance carriers.

17. The heart of the Act’s deregulatory scheme is a system of interconnection agreements, or ICAs, which are negotiated under the auspices of state utility commissions. Under an ICA, an ILEC, such as the Respondent, agrees to sell communication services to a new competitor, such as Complainant Infotelecom.

18. Interconnection between carriers is a necessary part of the nation’s communications system because Local Exchange Carriers possess a monopoly over the transmission lines connected to their end user customers. Because end users in the United States

have only one Local Exchange Carrier at any given time, competitive carriers are unable to transmit calls destined to an ILEC's end users without an interconnection with that ILEC.

19. ILECs must provide interconnection to their network "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252" of the Act. 47 U.S.C. § 251(c)(2)(D).

20. The process begins when an ILEC receives a "request for interconnection" for another communications company. *Id.* § 252(a)(1).

21. The Act then requires the ILEC to "negotiate in good faith . . . the particular terms and conditions of agreements to fulfill" its duty to sell communication services to these competitive carriers. *Id.* § 251(c)(1).

22. If the parties are unable to agree on all terms, either party may petition the relevant state commission to arbitrate "open issues." *Id.* § 252(b)(1).

23. Whether an interconnection results from voluntary negotiations or commission-supervised arbitration, the resulting interconnection agreement must be publicly filed. *Id.* § 252(h).

24. In lieu of negotiating a new agreement, a requesting carrier may also choose to adopt the terms and conditions of an existing state commission-approved ICA that the ILEC has entered into with another carrier. *Id.* § 252(i). The ILEC has a duty to "make available any interconnection, service, or network element provided under an agreement . . . to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." *Id.*

25. Ohio law relating to interconnection between carriers and interconnection agreements contains similar requirements. *See* OAC 4901:1-7-06 and 4901:1-7-07. For example, OAC 4901:1-7-06(A)(3) requires “All telephone companies shall have the duty to negotiate in good faith the terms and conditions of the interconnection agreement.”

26. Furthermore, ORC Section 4905.041 requires that the Commission not establish requirements or pricing for network interconnection that is inconsistent with or prohibited by federal law, including federal regulations.

27. ORC Section 4905.22 prohibits a public utility from demanding charges that are unjust, unreasonable or in excess of that allowed by law or order of the Commission.

28. ORC Section 4905.35 prohibits a public utility from giving any undue or unreasonable preference or advantage to any firm, and from subjecting any firm to any undue or unreasonable prejudice or disadvantage.

29. ORC Section 4927.16 requires that the Commission not establish pricing for interconnection in a manner that is inconsistent with or prohibited by federal law, including federal regulations, and that the Commission must comply with federal law, including federal regulations.

B. About the ICA at Issue in This Case

30. Several AT&T-owned ILECs collectively negotiated an ICA with non-party Level 3 Communications, LLC (“Level 3”) pursuant to sections 251 and 251 of the Act. *See generally* 13-State ICA.

31. In or about February 2005, the AT&T ILECs and Level 3 negotiated a First Amendment to the 13-State ICA. *See generally* First Amendment.

32. Of particular relevance here, the AT&T ILECs and Level 3 negotiated specific provisions in an effort to address the intercarrier compensation obligations with regard to voice traffic that originates in IP and is later converted to circuit switched format in order to be terminated to an end user on the PSTN (the “IP-PSTN Traffic”).

33. Upon information and belief, the parties engaged in negotiations regarding IP-PSTN traffic for at least the following reasons: (1) as a competitive non-legacy carrier, Level 3 has traditionally carried high volumes of IP-PSTN Traffic; (2) the intercarrier compensation obligations for such traffic have been and remain an issue unresolved by the Federal Communications Commission (“FCC”) for well over a decade; (3) the AT&T ILECs assert that IP-PSTN traffic should be treated the same as traffic that originates and terminates on the PSTN, such that its “access service” tariffs are fully applicable and require Level 3 to pay significant compensation to the AT&T ILECs; (4) Level 3, however, generally asserts that little, if any, intercarrier compensation is due for IP-PSTN traffic because it is unregulated traffic that does not fit within the FCC’s intercarrier compensation rules; (5) the parties believed that a decision by the FCC regarding the intercarrier compensation obligations for IP-PSTN traffic would be made in the near-term, such that the parties could “agree to disagree” while awaiting that guidance.

34. As reflected in the First Amendment, the AT&T ILECs and Level 3 reached a compromise whereby all IP-PSTN traffic would be treated as local traffic, and thus not subject to the higher tariffed access charges associated with originating and terminating long distance traffic. *See* First Amendment, ¶¶ 6.0, 7.3. Under this agreement, Level 3 would pay a rate of \$.00035 per minute for IP-PSTN traffic, which is identified as the “rate for Total Compensable

Local Traffic.” *Id.* The Commission adopted and approved the SBC Ohio-Level 3 interconnection agreement which was filed on March 16, 2005 in Case No. 05-344-TP-NAG.

35. The parties also agreed that they would essentially hold their dispute regarding the rate in abeyance until the FCC took further action to clarify the applicable intercarrier compensation obligations for IP-PSTN traffic. Specifically, the agreement provides:

On a monthly basis, no later than the 15th day of the succeeding month to which the calculation applies, the Delivering Party shall report its calculation of the difference between the amounts Level 3 paid to SBC for terminating such traffic (at rates applicable to Total Compensable Local Traffic (as defined herein)) and the amounts Level 3 would have paid had that traffic been rated according to SBC’s intrastate or interstate switched access tariffs based upon originating and terminating NPA-NXX (“**Delta**”). By the first day of the following month, the Parties will agree on the amount of the Delta. At such time as **the Delta exceeds \$500,000** the Parties will negotiate resolution of the Delta for a period not to exceed eleven (11) business days. If the parties are unable to reach resolution, Level 3 shall pay the Delta into an interest bearing escrow account with a First Party escrow agent mutually agreed upon by the Parties.

First Amendment ¶ 7.3 (emphasis added); *see also id.* at ¶ 7.8 (“This Section 7.0 shall remain in effect until the effective date of an FCC Order or (*sic*) addressing compensation for IP-PSTN/PSTN-IP traffic. . . .”)

36. The Commission approved the adoption by Infotelecom and AT&T Ohio of the terms and conditions of the SBC Ohio-Level 3 ICA, including the First Amendment in Case No. 07-1065-TP-NAG.

37. Because all of the traffic that Infotelecom delivers on its network is IP-PSTN traffic, it has paid to each of the relevant Defendants a rate of \$.00035, the Total Compensable Local Traffic rate, for each of the minutes of traffic that Infotelecom delivers to a Defendant.

38. Infotelecom has also undertaken the monthly Delta calculations required by paragraph 7.3 of the First Amendment.

39. By definition, the “Delta” under the First Amendment is a calculation made on a “monthly basis.” Therefore, Infotelecom has not yet triggered the negotiation or escrow provisions contemplated by paragraph 7.3.

40. Despite this fact, AT&T Ohio began making demands for Infotelecom to escrow payments, contending that they are due under the First Amendment. These demands rest on the mistaken impression that the monthly Delta calculations may be accumulated from month-to-month and across all thirteen states in order to reach the \$500,000 trigger set forth in paragraph 7.3.

41. On February 16, 2011, the AT&T ILECs (which includes AT&T Ohio and other AT&T ILECs in several other states, collectively the “AT&T ILECs”) made a written demand to Infotelecom to escrow \$1,684,793.36 for what they purport to be the amount of the “California Delta,” and \$765,300.26 for what they purport to represent the “Texas Delta.” Defendants demanded these payments be made by February 23, 2011.

42. Infotelecom responded to the February 16 Letter on February 23, 2011 explaining, *inter alia*, that the First Amendment defined the Delta as a calculation made on a “monthly basis,” and that Infotelecom had not met the trigger for requiring escrow payments.

43. On March 25, 2011, the AT&T ILECs responded to the February 23 Letter, dismissing Infotelecom’s position as “meritless” and setting forth demands for payment of the following amounts:

- \$1,684,793.36 for the “California Delta”
- \$765,300.26 for the “Texas Delta”
- \$433,191.03 for the “Illinois Delta” and
- \$83,434.59 for the “Ohio Delta”

44. In the March 25 Letter, the AT&T ILECs also indicated that if Infotelecom did not accede to the escrow demands within 45 days, “the AT&T ILECs will pursue any and all rights and remedies it has under the ICAs, its tariffs and/or the law, including without limitation, termination of the ICAs.”

45. Following receipt of the letter, Infotelecom engaged in conversations and exchanged further letters with the AT&T ILECs. Based on information and belief that Level 3 is not escrowing payments pursuant to the First Amendment (such that the AT&T ILECs are likely treating Infotelecom in a discriminatory manner in violation of the Act), Infotelecom sought information from the AT&T ILECs regarding how the First Amendment was being implemented between Level 3 and the AT&T ILECs. Specifically, it sought to confirm whether Level 3 is escrowing payments and, if not, whether Level 3 is being assessed an unpublished rate for its IP-PSTN long-distance traffic. The AT&T ILECs refused to provide the information reasonably requested by Infotelecom, indicating that they would not even seek permission to release this information until Infotelecom had escrowed the full amount demanded by the Defendants.

46. Infotelecom has since confirmed that Level 3 is not escrowing payments under the ICA. Thus, even AT&T Ohio admits that the Delta is not to be calculated cumulatively because AT&T Ohio has not required Level 3 to escrow money.

47. Efforts to resolve the dispute had proven unsuccessful and Infotelecom believed that the AT&T ILECs were prepared to follow through on the threat to terminate the ICA between Infotelecom and the AT&T ILECs. As such, on May 5, 2011, Infotelecom filed a federal lawsuit against the AT&T Ohio, together with the other relevant AT&T ILECs that are not a part of this proceeding. *See Infotelecom, LLC v. Illinois Bell Telephone Company d/b/a AT&T Illinois, et al*, No. 3:11-cv-0739 (JCH) (D. Conn.). Infotelecom also sought a preliminary

injunction prohibiting AT&T from disconnecting services to Infotelecom. *Id.* at Dkts. 33 - 36, 38-41 (portions filed under seal). In lieu of seeking a temporary restraining order, the parties agreed that AT&T would not terminate the ICA pending the resolution of the motion for preliminary injunction. Infotelecom also agreed to escrow \$150,000. AT&T filed a motion to dismiss, wherein it argued that (1) the court did not have jurisdiction over Infotelecom's request for a declaratory ruling that Infotelecom had not breached the ICA and (2) that Infotelecom's complaint did not state a claim for discrimination. On July 15, 2011, the court granted in part and denied in part AT&T's motion to dismiss, finding that it did not have federal subject matter jurisdiction over the ICA interpretation issue, but that Infotelecom had stated a claim against AT&T for discrimination based on AT&T's alleged secret agreement with Level 3.

48. In partially granting the motion to dismiss, the court also terminated Infotelecom's motion for preliminary injunction as moot. Infotelecom has filed a notice of appeal challenging the Court's conclusion and has asked the Court to exercise its discretion to maintain the status quo by prohibiting AT&T from disconnecting service during the pendency of the appeal. *See Infotelecom, LLC v. Illinois Bell Telephone Company d/b/a AT&T Illinois, et al*, No. 3:11-cv-0739 (JCH), Dkts. 81 – 84.2) (D. Conn July 19, 2011). The parties had agreed to a litigation standstill while they discussed settlement. On August 17, 2011, AT&T in-house counsel discontinued settlement conversations, rejecting without explanation Infotelecom's repeated requests for face-to-face meetings between the party's business decision makers. Also on August 17, 2011, AT&T sent Infotelecom a notice of termination setting September 1, 2011, as the date AT&T will terminate the ICA and disconnect Infotelecom. Given this quickly approaching termination date, Infotelecom has filed the present proceeding to preserve service while the Commission evaluates the merits of the dispute.

49. If AT&T Ohio terminates the ICA, Infotelecom will suffer substantial harm to its business and its reputation because it will be unable to deliver calls to end users who receive local exchange services from AT&T Ohio. Similarly, consumers from Ohio, and throughout the country, whose traffic traverses Infotelecom's network will be unable to reach the customers served by AT&T Ohio.

COUNT I

(Violation of Interconnection Agreement)

50. Complainant realleges and incorporates each of the allegations in paragraphs 1 through 49 as if fully set forth herein.

51. An actual, present and justiciable controversy exists between Infotelecom and AT&T Ohio because AT&T Ohio has demanded that Infotelecom escrow millions of dollars in payments that are not properly due under the ICA.

52. Because the First Amendment defines the "Delta" as a monthly calculation, and only requires the parties to negotiate resolution of the Delta or escrow payments when the monthly calculation exceeds \$500,000, Infotelecom has not met the trigger in the ICA.

53. Further, because the First Amendment applies on a state-by-state basis, rather than cumulatively across all states, Infotelecom has not met the trigger in the ICA.

54. AT&T has, therefore, erroneously demanded that Infotelecom escrow amounts relating to the California, Texas, Illinois, and Ohio Deltas.

55. Because Infotelecom has no legal duty to escrow the California, Texas, Illinois, and Ohio Deltas demanded by AT&T, AT&T Ohio has violated the ICA by wrongfully threatening to terminate the ICA and threatening to discontinue service to Infotelecom.

COUNT II

(Regulatory Relief)

56. Complainant realleges and incorporates each of the allegations in paragraphs 1 through 55 as if fully set forth herein

57. AT&T Ohio has indicated an intent to wrongfully, and without legal justification, discontinue interconnection services to Infotelecom in violation of its statutory duties. *See* 47 U.S.C. §§ 251-252.

58. Several provisions of Ohio law support a Commission order maintaining the status quo and prohibiting AT&T from terminating service. OAC 4901-9-01(E) authorizes the Commission to prohibit termination if undisputed amounts are paid during the pendency of the complaint. Further, OAC 4901:1-7-29(B) authorizes “the commission or an attorney examiner [to] direct the aggrieved LEC to stay the termination for further investigation” when a LEC intends to disconnect another LEC. The Commission should do so here.

59. If AT&T Ohio disconnects Infotelecom’s service, Infotelecom’s business will be harmed, because it will no longer be able to deliver calls to or receive calls from AT&T Ohio’s end users. This will irreparably injure Infotelecom’s reputation as a provider of VoIP services. Moreover, due, in part to the fact that Infotelecom receives telephone numbers from AT&T, there is no immediately available technical solution that would allow Infotelecom to re-route the traffic to avoid this harm.

60. Infotelecom’s customers and the public will also be harmed, because their calls will not be able to reach their intended destination. As the Federal Communications Commission has observed, “the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the goals of the Act.” *Connect America Fund*, 2011 WL

466775, ¶ 654 & n. 1013 (citing *In re Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, Declaratory Ruling and Order, WC Docket No. 07-135, 22 FCC Rcd. 11629 (2007)).

61. On the other hand, AT&T Ohio will not be harmed if the Commission issues the relief requested by Infotelecom and prohibits AT&T Ohio from disconnecting service.

Infotelecom pays AT&T Ohio for every minute of traffic that Infotelecom sends to AT&T Ohio's network at the rates for IP-PSTN traffic provided in the parties' ICA (\$0.00035).

The parties' dispute involves a disagreement only about Infotelecom's duty to escrow payments – payments which would not be available to AT&T until the Federal Communications Commission ultimately decides the open legal question about whether *any* intercarrier compensation is required for IP-PSTN traffic. Thus, AT&T Ohio will be unable to demonstrate any material harm that will accrue if the Commission maintains the *status quo*.

62. Finally, Infotelecom will prevail on the merits of this action by demonstrating that it is not legally required to escrow the payments demanded by AT&T. As demonstrated in the excerpt above, a plain language reading of the ICA demonstrates that the Delta is calculated “[o]n a monthly basis” and the \$500,000 trigger is evaluated on a monthly basis. There is no ambiguity and this provision will be interpreted in Infotelecom's favor.

63. For the foregoing reasons, Infotelecom is entitled to regulatory relief prohibiting AT&T Ohio from discontinuing service to Infotelecom.

PRAYER FOR RELIEF

64. Infotelecom respectfully requests that the Commission grant the following relief:

(a) Find that, pursuant to ¶ 7.3 of the First Amendment, Infotelcom is not required to make any of the escrow payments demanded by AT&T;

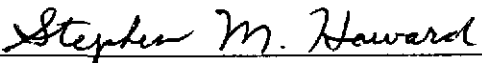
(b) Find that, pursuant to ¶ 7.3 of the First Amendment, any duty to make escrow payments would accrue only when the Delta calculation, with regard to a particular state, in any given month, exceeds \$500,000 and that calculations do not apply on a cumulative basis;

(c) Enter an Order prohibiting AT&T Ohio from terminating the ICA or otherwise discontinuing service to Infotelecom, unless otherwise ordered by this Commission; and

(d) Such other relief as Infotelecom may be entitled to at law or at equity, or which the Commission determines to be just and proper.

Dated: August 24, 2011

Respectfully submitted,



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EXHIBIT A

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

by and among

**ILLINOIS BELL TELEPHONE COMPANY D/B/A SBC ILLINOIS,
INDIANA BELL TELEPHONE COMPANY INCORPORATED D/B/A SBC INDIANA,
MICHIGAN BELL TELEPHONE COMPANY D/B/A SBC MICHIGAN,
NEVADA BELL TELEPHONE COMPANY D/B/A SBC NEVADA,
THE OHIO BELL TELEPHONE COMPANY D/B/A SBC OHIO,
PACIFIC BELL TELEPHONE COMPANY D/B/A SBC CALIFORNIA,
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY D/B/A SBC
CONNECTICUT,
SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A SBC ARKANSAS,
SBC KANSAS, SBC MISSOURI, SBC OKLAHOMA AND/OR SBC TEXAS,
WISCONSIN BELL, INC. D/B/A SBC WISCONSIN**

and

LEVEL 3 COMMUNICATIONS, LLC

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

This Interconnection and/or Resale Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), by and between one or more of the SBC Communications Inc. owned ILEC's Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (only to the extent that the agent for each such SBC-owned ILEC executes this Agreement for such SBC-owned ILEC and only to the extent that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and, Level 3 Communications, LLC ("LEVEL 3"), (a Delaware corporation), shall apply to the state(s) of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

WHEREAS, the Parties want to Interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to End-Users over their respective Telephone Exchange Service facilities in the states which are subject to this Agreement; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

WHEREAS, for purposes of this Agreement, LEVEL 3 intends to operate where Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin are the incumbent Local Exchange Carrier(s) and LEVEL 3, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to unbundled Network Elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the foregoing ILEC Service areas by the appropriate State Commission(s);

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Capitalized Terms used in this Agreement shall have the respective meanings specified in the General Terms and Conditions Definitions Appendix, and/or as defined elsewhere in this Agreement.

2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

2.1 Definitions

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

2.2 Headings Not Controlling

2.2.1 The headings and numbering of Sections, Parts, Appendices Schedules and Exhibits to this Agreement are for convenience only and shall not be

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construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

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

2.3 Referenced Documents

2.3.1 Unless the context shall otherwise specifically require, and subject to Section 21, to the extent not inconsistent with this Agreement, whenever any provision of this Agreement refers to a technical reference, technical publication, LEVEL 3 Practice, SBC-13STATE Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (collectively, a "Referenced Instrument"), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect, and will include the then-current version or edition (including any amendments, supplements, addenda, or successors) of any other Referenced Instrument incorporated by reference therein.

2.4 References

2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

2.5 Tariff References

2.5.1 Wherever any Commission ordered tariff provision or rate is cited or quoted herein, it is understood that said cite encompasses any revisions or modifications to said tariff. Each Party has incorporated by reference certain provisions of its Tariffs that govern the provision of specified services or facilities provided hereunder. Subject to Section 2.11.2 regarding changes in rates, if any provision of this Agreement and an

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applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the provisions in this Agreement shall prevail.

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

2.6 Conflict in Provisions

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

- 2.6.2 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addenda. In particular, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

- 2.6.3 In SBC CONNECTICUT only, in the event of a conflict between any provision in this Agreement and any provision in the DPUC ordered tariffs covering the services that are the subject of this Agreement with SBC CONNECTICUT, such DPUC ordered tariffs will prevail. The Parties reserve their rights to dispute the issues addressed in this provision before the Connecticut DPUC.

2.7 Joint Work Product

- 2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

2.8 Severability

- 2.8.1 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced

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to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

2.9 Incorporation by Reference

2.9.1 The General Terms and Conditions of this Agreement, and every Interconnection, Resale Service Network Element, function, facility, product or service provided hereunder, shall be subject to all rates, terms and conditions contained in the Appendices to this Agreement which are legitimately related to such Interconnection, Resale Service, Network Element, function, facility, product or service; and all such rates, terms and conditions are incorporated by reference herein and deemed a part of every Interconnection, Resale Service, Network Element, function, facility, product or service provided hereunder. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each Interconnection, Resale Service, Network Element, function, facility, product or service provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End-User local exchange service provider selection; compliance and certification; law enforcement; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; hazardous substances and responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; customer inquiries; expenses; conflict of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

2.10 Non-Voluntary Provisions

2.10.1 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated by SBC-13STATE, but instead resulted from

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determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively, a “Non-Voluntary Arrangement”). SBC-13STATE has identified some, but not all, of the Non-Voluntary Arrangements contained in this Agreement, by designating such provisions with asterisks. If any Non-Voluntary Arrangement is modified as a result of any order or finding by the FCC, the appropriate Commission or a court of competent jurisdiction, any Party may, by providing written notice to the other Party, require that any affected Non-Voluntary Arrangement (and any related rates, terms and conditions) be deleted or renegotiated, as applicable, in good faith and this Agreement amended accordingly. If such modifications to this Agreement are not executed within sixty (60) days after the date of such notice, a Party may pursue its rights under Section 10.

2.10.2 The Parties acknowledge that the Non-Voluntary Arrangements contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Arrangement. By way of example only, the Parties acknowledge that the PUCO’s imposition in Ohio of the Minimum Telephone Service Standards (and all *terms and conditions relating thereto*) shall not apply in or be “portable to” any state other than Ohio.

2.11 State-Specific Rates, Terms and Conditions

2.11.1 For ease of administration, this multistate Agreement contains certain specified rates, terms and conditions which apply only in a designated state. To the extent that this Agreement contains specified rates, terms and conditions which apply only in a given state, such rates, terms and conditions shall not apply and shall have no effect in any other state(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

2.11.2 Successor Rates. Certain of the rates, prices and charges set forth in the applicable Appendix Pricing have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that the Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if

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so expressly ordered). If either Party refuses to execute an amendment to this Agreement within sixty (60) days after the date of such order or docket, the other Party may pursue its rights under Section 10.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein, SBC-13STATE's obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which SBC-13STATE is then deemed to be the ILEC under the Act (the "ILEC Territory"), and

2.12.1.2 assets that SBC-13STATE owns or leases and which are used in connection with SBC-13STATE's provision to LEVEL 3 of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "ILEC Assets").

2.13 This Agreement is intended as a successor to the Interconnection Agreement between the same parties that became effective:

on July 20, 2001 in the state of Arkansas,
on August 4, 2001 in the state of Connecticut,
on November 24, 2001 in the state of Indiana,
on August 24, 2001 in the state of Ohio,
on December 1, 2001 in the state of Oklahoma,
on August 18, 2001 in the state of Wisconsin,
on November 30, 2001 in the state of Kansas,
on December 1, 2001 in the state of Missouri,
on December 30, 2001 in the state of Nevada,
on June 3, 2001 in the state of California,
on March 31, 2001 in the state of Illinois,
on April 16, 2001 in the state of Texas
and on February 15, 2001 in the state of Michigan.

Any provision of this Agreement that requires or permits a Party to take certain actions (such as submitting service orders, installing facilities, or providing information) shall not be interpreted as requiring either Party to repeat actions that were already taken under the previous agreement, unless the requirements of this Agreement are inconsistent with the arrangements previously in place

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between the Parties; provided, however, that for the avoidance of any doubt, the foregoing shall not apply to (a) any new services, facilities, or Network Elements for which LEVEL 3 submits an order, request, or application after the Effective Date, (b) nor to any pending (but not yet provisioned) services, facilities, or Network Elements for which LEVEL 3 submits an order, request, or application after the Effective Date of this Agreement to modify or add to the pending (i.e., submitted by LEVEL 3 prior to the Effective Date of this Agreement, but not yet fulfilled) order, request, or application, (c) nor to any existing services, facilities, or Network Elements for which LEVEL 3 submits an order, request, or application after the Effective Date of this Agreement to modify the same. Rather, in the case of subsections (a), (b), and (c) directly above, any orders, requests, applications submitted by LEVEL 3 after the Effective Date of this Agreement shall be governed by the rates, terms, and conditions of this Agreement. Whenever possible, services provided under the previous agreement shall be continued without interruption under the rates, terms, and conditions of this Agreement. Nothing in this Agreement is intended to extinguish any obligation of either Party to pay for services provided under the previous agreement but not yet billed or paid for, or any other obligation arising under the previous agreement that, by the terms of that agreement or by the nature of the obligation, survives the termination of that agreement.

3. NOTICE OF CHANGES -- SECTION 251(c)(5)

- 3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new 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").

4. GENERAL RESPONSIBILITIES OF THE PARTIES

- 4.1 SBC-12STATE and LEVEL 3 shall each use their best efforts to meet the Interconnection Activation Dates.
- 4.2 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with SBC-13STATE's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and

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compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

- 4.3 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End-Users in their respective designated service areas.
- 4.4 Each Party is solely responsible for all products and services it provides to its End-Users and to other Telecommunications Carriers.
- 4.5 Facilities-based carriers and UNE-based Switch Port providers are responsible for administering their End-User records in a LIDB.
 - 4.5.1 SBC CALIFORNIA reserves the right on one hundred eighty (180) calendar days notice to require UNE-Based Switch Port providers to administer their End-User records in SBC CALIFORNIA's LIDB.
 - 4.5.2 SBC NEVADA does not have a line information database and/or Calling Name database. Line information database services can be purchased from SBC CALIFORNIA.
- 4.6 At all times during the Term, each Party shall keep and maintain in force at each Party's expense all insurance required by Applicable Law (e.g. workers' compensation insurance) as well as general liability insurance in the amount of (at least) \$10,000,000 for personal injury or death to any one person, property damage resulting from any one incident, and automobile liability with coverage for bodily injury and for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance). This Section 4.6 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 4.7 Upon LEVEL 3 signature of this Agreement, LEVEL 3 shall provide SBC-13STATE with LEVEL 3's state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services.
- 4.8 In the event that either Party makes a corporate name change (including addition or deletion of d/b/a) that Party (the "Changing Party") shall incur no charges for non-Changing Party making changes to Changing Party's billing accounts or

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changes to OSS programs that automatically populate such name on Changing Party service orders. Changing Party shall be responsible for any charges associated with changes made to any OS/DA branding, recorded announcements, or any required restencilling on any collocation arrangements. Charges for changes to any OS/DA branding or recorded messages will be rated pursuant to the branding language included in this agreement. Charges associated with any restencilling on any collocation arrangements will be rated on an Individual Case Basis.

- 4.9 Should either party assign this Agreement and all assets ordered and provisioned out of this Agreement, pursuant to the assignment language provided in this Agreement, and such assignment results in a change to LEVEL 3's ACNA or OCN, such party shall be responsible for all charges associated with service orders required to change the ACNA or OCN on each End-User account or each circuit. Service order charges will be rated pursuant to the Pricing Schedule in this agreement. Charges associated with any restencilling or reengineering of any collocation arrangements will be rated on an Individual Case Basis. In addition, assignee of this Agreement shall be responsible for all charges for services ordered and/or provisioned out of this Agreement, whether billed or unbilled as of the date of such approved assignment.
- 4.10 In the event either party makes or accepts a transfer or assignment of assets including End-User accounts (resale or UNE-P), UNE loops, interconnection trunks or facilities (including leased facilities), or collocation arrangements, which were ordered and provisioned out of this Agreement, such party shall submit all required service orders to effectuate such transfer. Service order charges will be rated pursuant to the Pricing Schedule of this Agreement. Any charges associated with any restencilling or reengineering of any collocation arrangements will be rated on an Individual Case Basis. The assigning party will continue to be billed for such assets until appropriate service orders have been issued by acquiring party to transfer assets to acquiring party's billing accounts.
- 4.11 Notwithstanding the above, SBC-13STATE and LEVEL 3 will make every effort to comply with guidelines established by Industry Agencies such as Telcordia and NECA as they relate to the assignment of ACNAs and OCNs to ensure accurate billing and routing of services and calls
- 4.12 When a End-User changes its service provider from SBC-13STATE to LEVEL 3 or from LEVEL 3 to SBC-13STATE and does not retain its original telephone number, the Party formerly providing service to such End-User shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the End-User's new telephone number.

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4.12.1 The following pertains to SBC ILLINOIS, SBC WISCONSIN and SBC CALIFORNIA only:

4.12.1.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated in its tariff(s) when its End-Users change their telephone numbers, such Party shall provide the same level of service to End-Users of the other Party.

4.12.2 The following applies to SBC INDIANA only:

4.12.2.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(I)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period different than the above period(s) when its End-Users change their telephone numbers, such Party shall provide the same level of service to End-Users of the other Party.

4.12.3 The following applies to SBC MICHIGAN only:

4.12.3.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in Michigan Administrative Rule 484.134 and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End-Users change their telephone numbers, such Party shall provide the same level of service to End-Users of the other Party.

4.12.4 The following applies to SBC OHIO only:

4.12.4.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End-Users change their telephone numbers, such Party shall provide the same level of service to End-Users of the other Party.

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- 4.13 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 4.14 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

5. EFFECTIVE DATE, TERM, AND TERMINATION

- 5.1 This Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 5.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on December 31, 2006. Absent the receipt by one Party of written notice from the other Party at least within one hundred and eighty (180) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 5.3 or 5.4.
- 5.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 5.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

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- 5.4 If pursuant to Section 5.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 5.5 and 5.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.4 other than its obligations under Sections 5.5 and 5.6.
- 5.5 Upon termination or expiration of this Agreement in accordance with Sections 5.2, 5.3 or 5.4:
- 5.5.1 Each Party shall continue to comply with its obligations set forth in Section 42; and
- 5.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;
- 5.5.3 Each Party's confidentiality obligations shall survive; and
- 5.5.4 Each Party's indemnification obligations shall survive.
- 5.6 If either Party serves notice of expiration pursuant to Section 5.2 or Section 5.4, LEVEL 3 shall have ten (10) days to provide SBC-13STATE written confirmation if LEVEL 3 wishes to pursue a successor agreement with SBC-13STATE or terminate its agreement. LEVEL 3 shall identify the action to be taken on each applicable (13) state(s). If LEVEL 3 wishes to pursue a successor agreement with SBC-13STATE, LEVEL 3 shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with SBC-13STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of LEVEL 3's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 5.7 The rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date of termination of this Agreement pursuant to Sections 5.2 and 5.4.
- 5.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), LEVEL 3 withdraws its Section 252(a)(1) request, LEVEL 3 must include in its notice of withdrawal a

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request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that LEVEL 3 does not wish to pursue a successor agreement with SBC-13STATE for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect for a period of ninety (90) days after the date LEVEL 3 provides notice of withdrawal of its Section 252(a)(1) request. On the ninety-first (91) day following SBC-13STATE's receipt of LEVEL 3's notice of withdrawal of its Section 252(a)(1) request, unless LEVEL 3 provided SBC-13STATE notice of a Section 252(i) adoption in the interim, the Parties shall, subject to Section 5.5, have no further obligations under this Agreement.

- 5.9 If LEVEL 3 does not affirmatively state that it wishes to pursue a successor agreement with SBC-13STATE in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of SBC-13STATE's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect for a period of ninety (90) days after the date LEVEL 3 provided or received notice of expiration or termination. On the ninety-first (91) day following LEVEL 3 provided or received notice of expiration or termination, the Parties shall, subject to Section 5.5, have no further obligations under this Agreement.
- 5.10 In the event of termination of this Agreement pursuant to Section 5.9, SBC-13STATE and LEVEL 3 shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that LEVEL 3 shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End-Users have been transitioned to a new LEC by the expiration date, termination date of this Agreement.

6. FRAUD

- 6.1 SBC-13STATE shall not be liable to LEVEL 3 for any fraud associated with LEVEL 3's End-User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). LEVEL 3 shall not be liable to SBC-13STATE for any fraud associated with SBC-13STATE's End-User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS is a service that allows End-Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABS calls: calling card, collect, and third number billed calls.
- 6.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABS, and ported numbers. The Parties' fraud minimization procedures are to be cost-

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effective and implemented so as not to unduly burden or harm one Party as compared to the other.

- 6.3 In cases of suspected fraudulent activity by an End-User, at a minimum, the cooperation referenced in Section 6.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End-User's permission to obtain such information.
- 6.4 SBC MIDWEST REGION 5-STATE, SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA, SBC CONNECTICUT will provide notification messages to LEVEL 3 on suspected occurrences of ABS-related fraud on LEVEL 3 accounts stored in the applicable LIDB. SBC CALIFORNIA will provide such alert messages by e-mail. SBC MIDWEST REGION 5-STATE, SBC SOUTHWEST REGION 5-STATE and SBC CONNECTICUT will provide via fax.
- 6.4.1 SBC SOUTHWEST REGION 5-STATE (on behalf of itself and SBC CONNECTICUT) and SBC CALIFORNIA will use a fraud monitoring system to determine suspected occurrences of ABS-related fraud for LEVEL 3 using the same criteria SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA use to monitor fraud on their respective accounts.
- 6.4.2 LEVEL 3 understands that fraud monitoring alerts only identify potential occurrences of fraud. LEVEL 3 understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. LEVEL 3 understands and agrees that it will also need to determine what, if any, action LEVEL 3 should take as a result of a fraud monitoring alert.
- 6.4.3 The Parties will provide contact names and numbers to each other for the exchange of fraud monitoring alert notification information twenty-four (24) hours per day seven (7) days per week.
- 6.4.4 For each alert notification provided to LEVEL 3, LEVEL 3 may request a corresponding thirty-day (30-day) historical report of ABS-related query processing. LEVEL 3 may request up to three (3) reports per alert.
- 6.5 In SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA ABS-related alerts are provided to LEVEL 3 at no additional charge, except as related in 6.5.1 below.

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6.5.1 In SBC CALIFORNIA, 1+ IntraLATA toll fraud alerts are offered for Resale only under the product name Traffic Alert Referral Service (TARS). For TARS, LEVEL 3 agrees to pay a recurring usage rate as outlined in Appendix Pricing.6.6 Traffic Alert Referral Service ("TARS") 1+ Intra-LATA Toll Fraud Monitoring

6.5.2 For terms and conditions for TARS, see Appendix Resale.

6.5.3 TARS is offered in SBC CALIFORNIA only.

7. ASSURANCE OF PAYMENT

7.1 Upon request by SBC-13STATE, in accordance with this provision, LEVEL 3 will provide SBC-13STATE with adequate assurance of payment of amounts due (or to become due) to SBC-13STATE.

7.2 Assurance of payment may be requested by SBC-12STATE if:

7.2.1 at the Effective Date LEVEL 3 had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC-13STATE for undisputed charges and/or appropriate escrow payments pursuant to Section 8 for disputed charges incurred by LEVEL 3 or

7.2.2 at any time on or after the Effective Date, there has been an impairment of the established credit, financial health, or credit worthiness of LEVEL 3 as compared to its status on August 1, 2004. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about LEVEL 3 that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or

7.2.3 LEVEL 3 fails to timely pay a bill rendered to LEVEL 3 by SBC-12STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which LEVEL 3 has complied with all requirements set forth in Section 9.3) or

7.2.4 to the extent consistent with applicable law, LEVEL 3 admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an

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assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at LEVEL 3's option, consist of:

7.3.1 a cash security deposit in U.S. dollars held by SBC-12STATE ("Cash Deposit") or

7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC-12STATE naming the SBC owned ILEC(s) designated by SBC-12STATE as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to SBC-12STATE ("Letter of Credit").

7.3.3 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, *non-recurring* and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC-12STATE, for the Interconnection, Resale Services, Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC-12STATE under this Agreement. Where LEVEL 3 has actual billings from SBC-12STATE for such functions, facilities, products or services under this Agreement for the three (3) months prior to SBC-12STATE's request for a deposit, the actual amount of those billings shall be used as the deposit amount.

7.3.3.1 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount that would exceed one (1) month's projected bill for LEVEL 3's initial market entry; provided, however, that after three (3) months of operation, SBC SOUTHWEST REGION 5-STATE may request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to LEVEL 3, which shall be determined when possible by reference to actual billings from SBC SOUTHWEST REGION 5-STATE to LEVEL 3 for functions, facilities, products or services provided under this Agreement for the two (2) months prior to SBC SOUTHWEST REGION 5-STATE's request.

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- 7.3.3.2 Notwithstanding anything else set forth in this Agreement, SBC SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by SBC SOUTHWEST REGION 5-STATE to be incurred in Oklahoma in an amount that would exceed two times projected average monthly billing to LEVEL 3.
- 7.4 To the extent that LEVEL 3 elects to provide a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 7.5 A Cash Deposit will accrue interest at the rate established by the respective state commission. Interest will accrue on a Cash Deposit from the day after it is received by SBC-12STATE through the day immediately prior to the date the Cash Deposit is credited to LEVEL 3's bill(s) or returned to LEVEL 3. SBC-12STATE will not pay interest on a Letter of Credit.
- 7.6 SBC-12STATE may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 7.6.1 LEVEL 3 owes SBC-12STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 7.6.2 to the extent consistent with applicable law, LEVEL 3 admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 7.6.3 the expiration or termination of this Agreement, should LEVEL 3 have undisputed unpaid charges that are due and remain open thirty (30) calendar days following the expiration or termination date.
- 7.7 If SBC-12STATE draws on the Letter of Credit or Cash Deposit, upon request by SBC-12STATE, LEVEL 3 will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3, but only to the extent of the amount previously drawn by SBC-12STATE.
- 7.8 Notwithstanding anything else set forth in this Agreement, if SBC-12STATE makes a request for assurance of payment in accordance with the terms of this

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Section, then SBC-12STATE shall have no obligation thereafter to perform under this Agreement until such time as LEVEL 3 has furnished SBC-12STATE with the assurance of payment requested; provided, however that SBC-12STATE will permit LEVEL 3 a minimum of 10 (ten) Business Days to respond to a request for assurance of payment before invoking this Section.

7.8.1 If LEVEL 3 fails to furnish the requested adequate assurance of payment on or before the date set forth in the request SBC-12STATE may also invoke the provisions set forth in Section 9.5 through Section 9.7.

7.9 The fact that a Cash Deposit or Letter of Credit is requested by SBC-12STATE shall in no way relieve LEVEL 3 from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

7.10 For adequate assurance of payment of amounts due (or to become due) to SBC CONNECTICUT, see the applicable DPUC ordered tariff.

8. BILLING AND PAYMENT OF CHARGES

8.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.

8.1.1 Remittance in full of all bills rendered by SBC MIDWEST REGION 5-STATE, SBC SOUTHWEST REGION 5-STATE and SBC CALIFORNIA is due within thirty (30) calendar days of each bill date (the "Bill Due Date"). Payment must be made in accordance with the terms set forth in Section 8.3 of this Agreement.

8.1.2 Remittance in full of all bills rendered by SBC NEVADA is due in accordance with the terms set forth in the Commission C2-A Tariff, with the date on which amounts are due referred to herein as the "Bill Due Date".

8.1.3 Remittance in full of all bills rendered by SBC CONNECTICUT is due in accordance with the terms set forth in the Connecticut Access Service

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Tariff approved by the DPUC, with the date on which amounts are due referred to herein as the “**Bill Due Date**”.

- 8.1.4 Remittance in full of all bills rendered by LEVEL 3 is due within thirty (30) calendar days of each bill date (the “**Bill Due Date**”). Payment must be made in accordance with the terms set forth in Section 8.3 of this Agreement.
- 8.1.5 If LEVEL 3 or SBC-12STATE fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from LEVEL 3 or SBC-12STATE after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to the billing Party as of the Bill Due Date (individually and collectively, “**Past Due**”), then a late payment charge will be assessed as provided in Sections 8.1.5.1 through 8.1.5.3, as applicable.
- 8.1.5.1 If any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than the SBC SOUTHWEST REGION 5-STATE Customer Records Information System (CRIS) is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable SBC-8STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than SBC SOUTHWEST REGION 5-STATE's CRIS will comply with the process set forth in the applicable SBC-8STATE intrastate access services tariff for that state.
- 8.1.5.2 If any charge incurred under this Agreement that is billed out of SBC SOUTHWEST REGION 5-STATE's CRIS is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied to SBC SOUTHWEST REGION 5-STATE CRIS-billed Past Due unpaid amounts will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable SBC SOUTHWEST REGION 5-STATE intrastate retail tariff governing Late Payment Charges to SBC SOUTHWEST REGION 5-STATE's retail End-Users that are business End-

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Users in that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of SBC SOUTHWEST REGION 5-STATE's CRIS will be governed by the SBC SOUTHWEST REGION 5-STATE intrastate retail tariff governing Late Payment Charges to SBC SOUTHWEST REGION 5-STATE's retail End-Users that are business End-Users in that state.

8.1.5.3 If any charge incurred under this Agreement that is billed out of any SBC MIDWEST REGION 5-STATE billing system is Past Due, the unpaid amounts will accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1-½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.

8.2 If any charge incurred by SBC-13STATE under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable LEVEL 3 intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.

8.3. ACH Transfers

8.3.1 LEVEL 3 and SBC-12STATE shall make all payments to the other Party ("Billed Party") via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by LEVEL 3 or SBC-12STATE, as the case may be, or through other mutually agreeable means. Remittance information will be communicated together with the funds transfer via the ACH network. The Billed Party must use the CCD+ or the CTX transaction set. LEVEL 3 and SBC-12STATE will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by LEVEL 3 or SBC-12STATE, as the case may be, no later than the Bill Due Date of each bill or Late Payment Charges will apply. LEVEL 3 or SBC-12STATE is not liable for any delays in receipt of funds or errors in entries caused by the Billed

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Party or Third Parties, including the Billed Party's financial institution. The Billed Party is responsible for its own banking fees. Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. The Billed Party is responsible for any Late Payment Charges resulting from the Billed Party's failure to use electronic funds credit transfers through the ACH network.

8.3.2 LEVEL 3 must make all payments to SBC CONNECTICUT in "immediately available funds." All payments to SBC CONNECTICUT must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by SBC CONNECTICUT. If LEVEL 3 makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If LEVEL 3 makes payment through funds transfer via the ACH network, LEVEL 3 must use the CCD+ or the CTX transaction set. LEVEL 3 and SBC CONNECTICUT Regulations. Each payment must be received by SBC CONNECTICUT no later than the Bill Due Date of each bill or Late Payment Charges will apply. SBC CONNECTICUT is not liable for any delays in receipt of funds or errors in entries caused by LEVEL 3 or Third Parties, including LEVEL 3's financial institution. LEVEL 3 is responsible for its own banking fees. Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. The Billed Party is responsible for any Late Payment Charges resulting from the Billed Party's failure to use electronic funds credit transfers through the ACH network.

8.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide good faith dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and within thirty (30) calendar days the non-paying party will provide in writing the specific details and reasons for disputing each item. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:

8.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;

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- 8.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 8.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.
- 8.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
 - 8.4.4.1 The escrow account must be an interest bearing account;
 - 8.4.4.2 All charges associated with opening and maintaining the escrow account will be borne by the Non-Paying Party;
 - 8.4.4.3 That none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
 - 8.4.4.4 All interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
 - 8.4.4.5 Disbursements from the escrow account shall be limited to those:
 - 8.4.4.5.1 authorized in writing by both the Non-Paying Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
- 8.5 Disputed Amounts in escrow shall be subject to Late Payment Charges as set forth in Section 8.1.5. Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.
- 8.6 The Non-Paying Party shall not be required to place Disputed Amounts in escrow, as required by Section 8.4, above, if: (i) the Non-Paying Party does not have a proven history of late payments and has established a minimum of twelve consecutive (12) months good credit history with the Billing Party (prior to the

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date it notifies the Billing Party of its billing dispute); and (ii) the Non-Paying Party has not filed more than three previous billing disputes within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute, which previous disputes were resolved in Billing Party's favor or, if the bill containing the disputed charges is not the first bill for a particular service to the Non-Paying Party, the Non-Paying Party's dispute does not involve 50% or more of the total amount of the previous bill out of the same billing system.

- 8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:

8.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the Dispute;

8.7.1.1 within ten (10) Business days after resolution of the Dispute, the *portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party* will be released to the Non-Paying Party, together with any accrued interest thereon;

8.7.1.2 within ten (10) Business days after resolution of the Dispute, the *portion of the escrowed Disputed Amounts resolved in favor of the Billing Party* will be released to the Billing Party, together with any accrued interest thereon; and

8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.

- 8.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 8.7.1.2 and Section 8.7.1.3 are completed within the times specified therein.

8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be

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grounds for termination of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.

- 8.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

8.9.1 Each additional copy of any bill provided for billing from SBC SOUTHWEST REGION 5-STATE's CABS billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.

8.9.2 Bills provided to LEVEL 3 from SBC SOUTHWEST REGION 5-STATE's CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.

8.10 Exchange of Billing Message Information

8.10.1 SBC-13STATE will provide LEVEL 3 a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services and Network Element usage sensitive services provided hereunder ("Customer Usage Data"). Such Customer Usage Data shall be provided by SBC-13STATE in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each SBC-13STATE owned LEVEL 3. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Network Element to the extent that similar usage sensitive information is provided to retail End-Users of SBC-13STATE within that state, (ii) with sufficient detail to enable LEVEL 3 to bill its End-Users for usage sensitive services furnished by SBC-13STATE in connection with Resale Services and Network Elements provided by SBC-13STATE. Procedures and processes for implementing the interfaces with SBC MIDWEST REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA, SBC CONNECTICUT, and SBC SOUTHWEST REGION 5-STATE will be included in implementation requirements documentation.

8.10.2 To establish file transmission for the Daily Usage File, LEVEL 3 must provide a separate written request for each state to SBC MIDWEST

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REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA, SBC CONNECTICUT and SBC SOUTHWEST REGION 5-STATE no less than sixty (60) calendar days prior to the desired first transmission date for each file.

- 8.10.3 Unless otherwise specified in Appendix Message Exchange, call detail for LEC-carried calls that are alternately billed to LEVEL 3 End-Users lines provided by SBC-13STATE through Resale or Network Elements will be forwarded to LEVEL 3 as rated call detail on the DUF.
- 8.10.4 SBC SOUTHWEST REGION 5-STATE shall bill LEVEL 3 for Usage Extract furnished by SBC SOUTHWEST REGION 5-STATE in accordance with the price(s) provided in the applicable Appendix Pricing under "Electronic Billing Information."
- 8.10.5 Interexchange call detail on Resale Services or Network Elements (ports) that is forwarded to SBC-13STATE for billing, which would otherwise be processed by SBC-13STATE for its retail End-Users, will be returned to the IXC and will not be passed through to LEVEL 3. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services and Network Elements (ports) will be passed through when SBC-13STATE records the message.
- 8.10.6 SBC MIDWEST REGION 5-STATE, SBC NEVADA and SBC CALIFORNIA Ancillary Services messages originated on or billed to a Resale Service or Network Element (port) in those seven (7) states shall be subject to the rates, terms and conditions of Appendix MESSAGE EXCHANGE.
- 8.10.7 LEVEL 3 shall be responsible for providing all billing information to each of its End-Users, regardless of the method used to provision the End-User's service.

8.11 Limitation on Back-billing and Credit Claims:

- 8.11.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have

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appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement.

- 8.11.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section 8.11 and is addressed separately in the Intercarrier Compensation Appendix.

9. NONPAYMENT AND PROCEDURES FOR DISCONNECTION

- 9.1 If a Party is furnished Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 9.1 through 9.7, inclusive, shall be applied separately for each such state.
- 9.2 Failure to pay undisputed charges shall be grounds for disconnection of services under this Agreement. If a Party fails to pay any undisputed charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges (“Unpaid Charges”), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
- 9.2.1 SBC INDIANA will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.
- 9.2.2 SBC KANSAS will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

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- 9.2.3 SBC MISSOURI will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 10.1 of this Agreement, together with the reasons for its dispute; and
- 9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and
- 9.3.3 pay all Disputed Amounts into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and
- 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts into that account. Subject to Section 8.4 preceding, until evidence that the full amount of the Disputed Charges has been deposited into an escrow account is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.
- 9.5 SBC-12STATE
- 9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a)

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through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

9.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

9.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.

9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5.1, Section 9.5.1.1 and Section 9.5.1.2:

9.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

9.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

9.6 SBC MIDWEST REGION 5-STATE ONLY

9.6.1 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.6.1.2 discontinue providing Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement after notice to Non-Paying Party set forth in Section 9.5.1

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- 9.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by SBC INDIANA will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.
- 9.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End-Users in the event of discontinuance of service.
- 9.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.7 SBC-7STATE only

- 9.7.1 Any demand provided by SBC-7STATE to LEVEL 3 under Section 9.5.1 will further specify that upon disconnection of LEVEL 3, SBC-7STATE will cause LEVEL 3's End-Users that are provisioned through Resale Services to be transferred to SBC-7STATE local service.
 - 9.7.1.1 A copy of the demand provided to LEVEL 3 under Section 9.7.1 will be provided to the Commission
- 9.7.2 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,
 - 9.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - 9.7.2.2 disconnect Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement after notice to Non-Paying Party set forth in Section 9.5.1.
 - 9.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by SBC KANSAS will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

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9.7.3 On the same date that Resale Services to LEVEL 3 are disconnected, SBC-7STATE will transfer LEVEL 3's End-Users provisioned through Resale Services to SBC-7STATE's local service. To the extent available at retail from SBC-7STATE, the Resale End-Users transferred to SBC-7STATE's local service will receive the same services that were provided through LEVEL 3 immediately prior to the time of transfer; provided, however, SBC-7STATE reserves the right to toll restrict (both interLATA and intraLATA) such transferred End-Users.

9.7.3.1 Notwithstanding any inconsistent provisions in this Agreement, the transfer of Resale End-Users to SBC MISSOURI will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

9.7.3.2 SBC-7STATE will inform the Commission of the names of all Resale End-Users transferred through this process.

9.7.3.3 Conversion charges and service establishment charges for transferring Resale End-Users to SBC-7STATE as specified in Section 9.7.3 will be billed to LEVEL 3.

9.7.3.4 The Billing Party has no liability to the Non-Paying Party or its End-Users in the event of disconnection of service in compliance with Section 9.7.2. SBC-7STATE has no liability to LEVEL 3 or LEVEL 3's End-Users in the event of disconnection of service to LEVEL 3 and the transfer of any Resale End-Users to SBC-7STATE local service in connection with such disconnection.

9.7.4 Within five (5) calendar days following the transfer, SBC-7STATE will notify each transferred Resale End-User that because of LEVEL 3's failure to pay SBC-7STATE, the End-User's local service is now being provided by SBC-7STATE. This notice will also advise each transferred Resale End-User that the End-User has thirty (30) calendar days from the date of transfer to select a new Local Service Provider.

9.7.4.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Missouri Resale End-Users will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

9.7.4.1.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Kansas Resale End-Users will comply with Kansas Corporation Commission Order No. 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

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9.7.5 The transferred Resale End-User shall be responsible for any and all charges incurred during the selection period other than those billed to LEVEL 3 under Section 9.7.3.3.

9.7.6 If any Resale End-User transferred to SBC-7STATE's local service under Section 9.7.3 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer, SBC-7STATE may terminate the transferred Resale End-User's service.

9.7.6.1 SBC-7STATE will notify the Commission of the names of all transferred Resale End-Users whose local service was terminated pursuant to Section 9.7.5.

9.7.6.2 Nothing in this Agreement shall be interpreted to obligate SBC-7STATE to continue to provide local service to any transferred Resale End-User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SBC-7STATE has with regard to such transferred Resale End-Users under Applicable Law; provided, however,

9.7.6.2.1 in SBC CALIFORNIA only, following expiration of the selection period and disconnection of such transferred Resale End-Users, where facilities permit, SBC CALIFORNIA will furnish transferred and subsequently disconnected local residential End-Users with "quick dial tone."

9.8 SBC CONNECTICUT only

9.8.1 For nonpayment and procedures for disconnection for SBC CONNECTICUT, see the applicable DPUC ordered tariff.

10. DISPUTE RESOLUTION

10.1 No claims, under this Agreement or its Appendices, shall be brought for disputed amounts more than twelve (12) months from the date of occurrence which gives rise to the dispute. Under this Section 10.1, if any portion of an amount due to a Party (the "Billing Party" under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within forty five (45) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item.

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LEVEL 3 will utilize the standard form provided by the appropriate LSC/LECC or CSC (in the case of claims relating to collocation) for submission of billing disputes. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.

- 10.2 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within forty five (45) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.
- 10.3 If the Parties are unable to resolve issues related to the Disputed Amounts within forty five (45) days after the Parties' appointment of designated representatives pursuant to Section 10.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.
- 10.4 The Parties agree that all negotiations and documents exchanged during negotiations pursuant to this Section 10, if marked "Confidential" or "Proprietary", shall be treated as Confidential or Proprietary Information in accordance with Section 20.1.
- 10.5 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.
- 10.6 Dispute Resolution.
 - 10.6.1 No claims shall be brought for disputes arising under this Agreement or its Appendices more than twenty-four (24) months from the date of occurrence which gives rise to the dispute.
 - 10.6.2 For disputes other than disputed amounts under this Agreement or its Appendices the Parties agree to appoint a designated representative as set forth in Section 10.2 and if unable to resolve the dispute, proceed as set forth in Section 10.3.

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10.6.3 Nothing in sections 10.2 and 10.3 shall be construed to preclude or limit either Party from seeking immediate injunctive relief from a court or agency with competent jurisdiction to the extent it deems necessary.

11. AUDITS – Applicable in SBC-12STATE only

11.1 Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the “Auditing Party”) may audit the other Party’s (the “Audited Party”) books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement (“service start date”) for the purpose of evaluating (i) the accuracy of Audited Party’s billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party’s billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party’s books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party’s favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party’s billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

11.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) days after the start of such audit.

11.1.2 Such audit shall be conducted either by the Auditing Party’s employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor’s fees and expenses. If an independent auditor is to be

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engaged, the Parties shall select an auditor by the thirtieth (30) day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.

- 11.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End-Users of Audited Party.
- 11.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than eighteen (18) months after creation thereof, unless a longer period is required by Applicable Law.
- 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (depending on the SBC Parties involved), for the number of days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.
- 11.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

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11.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.

11.2 Audits - SBC CONNECTICUT only

11.2.1 Except as provided in Appendix Compensation, SBC CONNECTICUT shall arrange for one (1) annual independent audit to be conducted by a "Big Six" independent public accounting firm or an accounting firm mutually agreed to by SBC CONNECTICUT, LEVEL 3 and all other CLECs doing business with SBC CONNECTICUT under the terms of an agreement adopted pursuant to Sections 251 and 252 of the Act for the purpose of evaluating the accuracy of SBC CONNECTICUT's billing and invoicing.

11.2.2 SBC CONNECTICUT will cooperate fully with the independent auditor in such audit and provide reasonable access to any and all appropriate SBC CONNECTICUT employees, books, records and other documents reasonably necessary to perform the audit.

11.2.3 SBC CONNECTICUT shall promptly correct any billing error that is revealed in the audit, including making refund of any overpayment to LEVEL 3 in the form of a credit on the invoice for the first full billing cycle after the audit report is issued; such refund shall include interest on the overpayment at the rate of eight percent (8%) per year. In the event that the audit reveals any underbilling and resulting underpayment to SBC CONNECTICUT by LEVEL 3, the underpayment shall be reflected in LEVEL 3's invoice for the first full billing cycle after the audit report is issued. SBC CONNECTICUT will not be entitled to recover interest on any underbilling to LEVEL 3 revealed by the audit for the time preceding the amount appearing on LEVEL 3's bill from SBC CONNECTICUT, however, SBC CONNECTICUT shall be entitled to recover interest at the interest rate referenced in Section 8.1.5.1 on such underbilling and LEVEL 3 shall pay interest for the number of days from the Bill Due Date of the bill on which such underbilling was rectified until the date on which payment is made and available to SBC CONNECTICUT.

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12. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 12.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, NETWORK ELEMENTS, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER SBC-13STATE NOR LEVEL 3 ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

13. LIMITATION OF LIABILITY

- 13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission, whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC-13STATE or LEVEL 3 has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.
- 13.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 13.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End-Users or Third Parties that relate to any Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End-User or Third Party

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for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End-User or Third Party for the Interconnection, Resale Services, Network Elements, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 13.3.

- 13.4 Neither LEVEL 3 nor SBC-13STATE shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 14.2 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 13.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by a Party's End-User in connection with any affected Interconnection, Resale Services, Network Elements, functions, facilities, products and services. Except as provided in the prior sentence, each Party hereby releases and holds harmless the other Party (and such other Party's Affiliates, and their respective officers, directors, employees and agents) from any such Claim.
- 13.5 SBC-13STATE shall not be liable for damages to a End-User's premises resulting from the furnishing of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by SBC-13STATE's gross negligence or willful misconduct. SBC-13STATE does not guarantee or make any warranty with respect to Interconnection, Resale Services, Network Elements, functions, facilities, products or services when used in an explosive atmosphere.

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- 13.6 LEVEL 3 hereby releases SBC-13STATE from any and all liability for damages due to errors or omissions in LEVEL 3's End-User listing information as provided by LEVEL 3 to SBC-13STATE under this Agreement, including any errors or omissions occurring in LEVEL 3's End-User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, Consequential, punitive or incidental damages.
- 13.7 SBC-13 STATE shall not be liable to LEVEL 3, its End-User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

14. INDEMNITY

- 14.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 14.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "**Indemnifying Party**") shall release, defend and indemnify the other Party (the "**Indemnified Party**") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("**Fault**") of such Indemnifying Party, its agents, its End-Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such

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Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

14.3 In the case of any Loss alleged or claimed by a End-User of either Party, the Party whose End-User alleged or claimed such Loss (the **"Indemnifying Party"**) shall defend and indemnify the other Party (the **"Indemnified Party"**) against any and all such Claims or Losses by its End-User regardless of whether the underlying Interconnection, Resale Service, Network Element, function, facility, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.

14.4 A Party (the **"Indemnifying Party"**) shall defend, indemnify and hold harmless the other Party (**"Indemnified Party"**) against any Claim or Loss arising from the Indemnifying Party's use of Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided under this Agreement involving:

14.4.1 any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Network Elements, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's End-Users.

14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End-User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End-User in the course of using any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided pursuant to this Agreement.

14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an

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Indemnified Party's or an Indemnified Party's End-User's use of Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply in the case of:

14.4.1.2.1 any use by an Indemnified Party or its End-User of an Interconnection, Resale Service, Network Element, function, facility, product or service in combination with an Interconnection, Resale Service, Network Element, function, facility, product or service supplied by the Indemnified Party or Persons other than the Indemnifying Party; or

14.4.1.2.2 where an Indemnified Party or its End-User modifies or directs the Indemnifying Party to modify such Interconnection, Resale Services, Network Elements, functions, facilities, products or services; and

14.4.1.2.3 no infringement would have occurred without such combined use or modification.

14.4.2 any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

14.5 LEVEL 3 acknowledges that its right under this Agreement to Interconnect with SBC-13STATE's network and to unbundle and/or combine SBC13-STATE's Network Elements (including combining with LEVEL 3's Network Elements) may be affected by Intellectual Property rights and contract rights of Third Parties absent SBC-13STATE's pursuit of the requisite Intellectual Property and contract rights.

14.5.1 To the extent required by the FCC in *In the Matter of MCI for Declaratory Ruling*, CC Docket No. 96-98, FCC 00-139 (Rel. April 27, 2000), it is the obligation of SBC-13STATE to use best efforts to obtain any consents,

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authorizations, or licenses to or for any Third Party Intellectual Property rights that may be necessary for LEVEL 3's use of Interconnection, Network Elements, functions, facilities, products and services furnished under this Agreement. In particular, SBC-13STATE must exercise its best efforts to obtain co-extensive Third Party Intellectual Property rights needed for LEVEL 3 to utilize network elements in the same manner as SBC-13STATE that are equal in quality to the Third Party Intellectual Property rights that SBC-13STATE obtains for itself. The costs of such Third Party Intellectual Property rights shall be considered with all other costs that go into determining the price of an unbundled network element.

- 14.5.2 Subject to SBC TEXAS' obligations under any Commission decisions and except as expressly stated in this Agreement, SBC TEXAS does not and shall not indemnify, defend or hold LEVEL 3 harmless, nor be responsible for indemnifying or defending, or holding LEVEL 3 harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to LEVEL 3's Interconnection with SBC TEXAS' network and unbundling and/or combining SBC TEXAS' Network Elements (including combining with LEVEL 3's Network Elements) or LEVEL 3's use of other functions, facilities, products or services furnished under this Agreement.
- 14.6 Subject to SBC TEXAS' and SBC ILLINOIS' obligations under any Commission decision and except as expressly stated in this Agreement, LEVEL 3 agrees to release, indemnify and hold SBC TEXAS and SBC ILLINOIS harmless from and against all Losses arising out of, caused by, or relating to any real or potential claim that LEVEL 3's Interconnection with SBC TEXAS' or SBC ILLINOIS' network, or LEVEL 3's use of SBC TEXAS' Network Elements beyond the uses SBC TEXAS or SBC ILLINOIS make of the Network Element, or unbundling and/or combining of SBC TEXAS' Network Elements (including combining with LEVEL 3's Network Elements) in a manner not contemplated by SBC TEXAS' and SBC ILLINOIS' licenses, or LEVEL 3's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any Third Party Intellectual Property rights or constitutes a breach of contract. In no event shall SBC TEXAS be liable for any actual or Consequential Damages that LEVEL 3 may suffer arising out of same.
- 14.7 LEVEL 3 shall reimburse SBC-13STATE for damages to SBC-13STATE's facilities utilized to provide Interconnection or unbundled Network Elements hereunder caused by the negligence or willful act of LEVEL 3, its agents or

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subcontractors or LEVEL 3's End-User or resulting from LEVEL 3's improper use of SBC-13STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than SBC-13STATE. Upon reimbursement for damages, SBC-13STATE will cooperate with LEVEL 3 in prosecuting a claim against the person causing such damage. LEVEL 3 shall be subrogated to the right of recovery by SBC-13STATE for the damages to the extent of such payment.

14.8 Indemnification Procedures

14.8.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

14.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.

14.8.3 Until such time as the Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that the Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

14.8.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

14.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not

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be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

14.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

14.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

14.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. *If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense.* If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

14.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

15. REMEDIES

15.1 Except as otherwise provided in this Agreement, no remedy set forth herein is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

16. INTELLECTUAL PROPERTY

16.1 Intellectual Property - SBC-13STATE

16.1.1 In order for LEVEL 3 to determine the extent to which SBC-13STATE is entitled to use a particular network element, SBC-13-STATE will provide to LEVEL 3 a list of all vendors/licensors applicable to unbundled Network Element(s) (which vendors have provided SBC-13STATE a software license) within seven (7) days of LEVEL 3's request for such a list. The list provided by SBC-13-STATE shall at a minimum detail the names of the specific third party vendors, the subject intellectual property, and the relevant contracts which govern SBC-13-STATE's use of that intellectual property.

16.1.2 Any Intellectual Property that originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.

16.1.3 SBC-13STATE will indemnify LEVEL 3 for any claims of infringement arising from LEVEL 3's use of Intellectual Property within the scope of any license agreement negotiated by SBC-13STATE for LEVEL 3. LEVEL 3 will indemnify SBC-13STATE for any claims of infringement arising from LEVEL 3's use of Intellectual Property beyond that which differs from SBC-13STATE's use and was not within the scope contemplated by the license agreement negotiated by SBC-13STATE for LEVEL 3 if such agreement is obtained.

17. NOTICES

17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be:

17.1.1 delivered personally;

17.1.2 delivered by express overnight delivery service;

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

17.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in (a), (b) or (c) of this Section 17.

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

17.1.5.1 the date of actual receipt,

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

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

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

17.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT	SBC-13STATE CONTACT
NAME/TITLE	Director—Interconnection Services	Contract Administration ATTN: Notices Manager
STREET ADDRESS	1025 Eldorado Boulevard	311 S. Akard, 9 th Floor Four Bell Plaza
CITY, STATE, ZIP CODE	Broomfield, CO 80021	Dallas, TX 75202-5398
TELEPHONE NUMBER	(720) 888-2620	214-464-1933
FACSIMILE NUMBER	(720) 888-5134	214-464-2006

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

17.2 SBC-8STATE communicates official information to LEVEL 3 via its Accessible Letter notification process. This process covers a variety of subjects, including

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updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

- 17.3 In the SBC-8STATES, LEVEL 3 may elect in writing to receive Accessible Letter notification via electronic mail (“e-mail”) distribution, either in lieu of or in addition to United States Postal Service (postage prepaid) distribution. LEVEL 3 acknowledges that United States Postal Service (postage prepaid) delivery will delay receipt of the information for a minimum of three (3) to five (5) days from the date the information is made available via e-mail. Accessible Letter notification via e-mail will be deemed given as of the earlier of the date of actual receipt and the date set forth on the e-mail receipt.
- 17.4 In SBC-8STATE, LEVEL 3 may designate an unlimited number of recipients for Accessible Letter notification via e-mail, but LEVEL 3 is limited to designating a maximum of four (4) recipients (in addition to the LEVEL 3 contact designated in Section 17.1) for Accessible Letter notification via United States Postal Service (postage prepaid).
- 17.5 In SBC-8STATE, LEVEL 3 shall submit a completed Notices / Accessible Letter Recipient Change Request Form (available on the applicable SBC-8STATE’s LEVEL 3 Handbook website) to the individual specified on that form to designate in writing each individual (other than the LEVEL 3 contact designated in Section 17.1) to whom LEVEL 3 requests Accessible Letter notification be sent, whether via e-mail or United States Postal Service. LEVEL 3 shall submit a completed Notices / Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any LEVEL 3 recipient of Accessible Letters (other than the LEVEL 3 contact designated in Section 17.1). Any completed Notices / Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) days following receipt by SBC-8STATE.
- 17.6 SBC SOUTHWEST REGION 5-STATE only:
- 17.6.1 SBC SOUTHWEST REGION 5-STATE shall provide a toll free facsimile number to LEVEL 3 for the submission of requests for Resale Services and Network Elements under this Agreement; LEVEL 3 shall provide SBC SOUTHWEST REGION 5-STATE with a toll free facsimile number for notices from SBC SOUTHWEST REGION 5-STATE relating to requests for Resale Services and Network Elements under this Agreement.

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17.7 INTENTIONALLY LEFT BLANK.

18. **PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

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

18.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

19. **NO LICENSE**

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

20. **CONFIDENTIALITY**

20.1 All information, including specifications, microfilm, photocopies, magnetic disks, magnetic tapes, audit information, models, system interfaces, forecasts, computer programs, software, documentation, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data shall be deemed "Confidential" or "Proprietary" (collectively "Proprietary Information") if:

20.1.1 Furnished or made available or otherwise disclosed by one Party (the "Disclosing Party") or its agent, employee, representative or Affiliate to

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the other Party (the “Receiving Party”) or its agent, employee, representative or Affiliate dealing with End-User-specific, facility-specific, or usage-specific information, other than End-User information communicated for the purpose of publication or directory database inclusion, 911, call processing, billing or settlement or for such other purposes as mutually agreed upon;

20.1.2 In written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary"; or

20.1.3 Communicated orally and declared to the Receiving Party at the time of delivery to be "Confidential" or "Proprietary", and which shall be summarized in writing and marked "Confidential" or "Proprietary" and delivered to the Receiving Party within ten (10) days following such disclosure; and

20.1.4 Any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent the same contain, reflect, are derived from, or are based upon, any of the information described in this Section 20, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as “**Derivative Information**”).

20.2 Proprietary Information Shall be Held in Confidence

20.2.1 Each Receiving Party agrees that:

- (a) all Proprietary Information communicated to it or any of its agents, employees, representatives and Affiliates in connection with this Agreement shall be held in confidence to the same extent as such Receiving Party holds its own confidential information of like importance; provided that such Receiving Party and its agents, employees, representatives and Affiliates shall not use less than a reasonable standard of care in maintaining the confidentiality of such information;
- (b) it will not, and it will not permit any of its agents, employees, representatives and Affiliates to disclose such Proprietary Information to any Third Party;

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- (c) it will disclose Proprietary Information only to those of its agents, employees, representatives and Affiliates who have a need for it in connection with the use or provision of any services required to fulfill this Agreement; and
- (d) it will, and will cause each of its agents, employees, representatives and Affiliates, to use such Proprietary Information only to perform its obligations under this Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose, including its own marketing purposes.

20.2.2 A Receiving Party may disclose Proprietary Information of a Disclosing Party to the Receiving Party's agents, employees, representatives and Affiliates who need to know such information to perform their obligations under this Agreement; provided that before disclosing any Proprietary Information to any agent, employee, representative or Affiliate, the Receiving Party shall notify such agent, employee, representative or Affiliate of such Party's obligation to comply with this Agreement. Any Receiving Party so disclosing Proprietary Information shall be jointly and severally liable for any breach of this Agreement by any of its agents, employees, representatives and Affiliates and such Receiving Party agrees, at its sole expense, to use its reasonable efforts (including court proceedings) to restrain its agents, employees, representatives and Affiliates from any prohibited or unauthorized disclosure or use of the Proprietary Information. Each Receiving Party making such disclosure shall notify the Disclosing Party as soon as possible if it has knowledge of a breach of this Agreement in any material respect.

20.2.3 Proprietary Information shall not be reproduced by any Receiving Party in any form except to the extent (i) necessary to comply with the provisions of Section 20.5 and (ii) reasonably necessary to perform its obligations under this Agreement. All such reproductions shall bear the same copyright and proprietary rights notices as are contained in or on the original.

20.3 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that:

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

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- 20.3.2 Is, or becomes, publicly known through no wrongful act of the Receiving Party; or
- 20.3.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 20.3.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 20.3.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 20.3.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 20.3.7 Is required to be made public by the Receiving Party pursuant to Applicable Law or regulation, provided that such production or disclosure shall have been made in accordance with Section 20.5.

20.4 Proposed Disclosure of Proprietary Information to a Governmental Authority

- 20.4.1 If a Receiving Party desires to disclose or provide to a Commission, the FCC or any other governmental authority any Proprietary Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Proprietary Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Proprietary Information an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.
- 20.4.2 If a Receiving Party is required by any Governmental Authority or by Applicable Law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of

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such requirement as soon as possible, and in no event later than five (5) calendar days after receipt of such requirement, and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the Disclosing Party at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 20.4 with respect to all or part of such requirement.

20.4.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 20.4. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Proprietary Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Proprietary information, including cooperating with the Disclosing Party to obtain an appropriate order for protective relief or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

20.5 Notwithstanding any of the foregoing, SBC-13STATE and LEVEL 3 shall be entitled to disclose Proprietary Information on a confidential basis to regulatory agencies upon request for information as to SBC-13STATE's activities under the Act and need not provide prior written notice of such disclosure if the Party has obtained an appropriate order for protective relief that confidential treatment shall be accorded to such Proprietary Information.

20.6 Return of Proprietary Information

20.6.1 All Proprietary Information, other than Derivative Information, shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that embody such Proprietary Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

20.6.2 At the request of the Disclosing Party, any Derivative Information shall be, at the option of the Receiving Party, either promptly returned to the

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Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Derivative Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

- 20.6.3 The Receiving Party may at any time either return the Proprietary Information to the Disclosing Party or destroy such Proprietary Information. If the Receiving Party elects to destroy Proprietary Information, all copies of such information shall be destroyed and upon the written request of the Disclosing Party, the Receiving Party shall provide to the Disclosing Party written certification of such destruction. The destruction or return of Proprietary information shall not relieve any Receiving Party of its obligation to continue to treat such Proprietary Information in the manner required by this Agreement.
- 20.7 Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even *if furnished before the date of this Agreement and each Party's obligation to safeguard Proprietary Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.*
- 20.8 Pursuant to Section 222(b) of the Act, both Parties agree to limit their use of Proprietary Information received from the other to the permitted purposes identified in the Act.
- 20.9 Each Party has the right to refuse to accept any Confidential Information under this Agreement, and nothing herein shall obligate either Party to disclose to the other Party any particular information.
- 20.10 The Parties agree that an impending or existing violation of any provision of this Section 20 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages. In the event of any breach of this Section 20 for which legal or equitable relief is sought, all reasonable attorney's fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.

21. INTERVENING LAW

21.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, et. al, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and 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) , which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Notwithstanding the foregoing, nothing in this Intervening/Change in

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Law paragraph is intended nor should be construed as modifying or superseding the rates, terms and conditions in the Parties' First Amendment Superseding Certain Inter-carrier Compensation, Interconnection and Trunking Provisions ("Superseding Amendment"), in which the Parties waived certain rights they may have under this Intervening/Change in Law paragraph with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined in the Superseding Amendment), POIs or trunking requirements that are the subject of the Superseding Amendment. Except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-13STATE state in which this Agreement is effective, and incorporated rates, terms and conditions of the FCC Plan into this Agreement, these rights also include but are not limited to SBC-13STATE's right to exercise its option at any time to adopt on a date specified by SBC-13STATE the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement (except as otherwise provided in the Superseding Amendment).

22. GOVERNING LAW

22.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Network Elements, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Little Rock, Arkansas; San Francisco, California; New Haven, Connecticut; Chicago, Illinois; Indianapolis, Indiana; Topeka, Kansas; Detroit, Michigan; St. Louis, Missouri; Reno, Nevada; Columbus, Ohio; Oklahoma City, Oklahoma; Dallas, Texas and Milwaukee, Wisconsin.

23. REGULATORY APPROVAL

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

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24. CHANGES IN END-USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION

24.1 Applies to SBC-12STATE only

24.1.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End-User authorization prior to changing an End-User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End-User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.

24.1.2 Only an End-User can initiate a challenge to a change in its LEC. If an End-User notifies one Party that the End-User requests local exchange service, and the other Party is such End-User's LEC, then the Party receiving such request shall be free to immediately access such End-User's CPNI subject to the requirements of the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End-User.

24.1.3 When an End-User changes or withdraws authorization from its LEC, each Party shall release End-User-specific facilities belonging to the ILEC in accordance with the End-User's direction or that of the End-User's authorized agent. Further, when an End-User abandons its premise (that is, its place of business or domicile), SBC-12STATE is free to reclaim the unbundled Network Element facilities for use by another End-User and is free to issue service orders required to reclaim such facilities.

24.2 Applies to SBC CONNECTICUT only

24.2.1 The Parties agree that LEVEL 3 will not submit a Local Exchange Carrier order for an End-User to the Local Service Provider currently serving that End-User without proper authorization from that End-User, as required by the FCC in Subpart K, Part 64 rules and regulations and by the DPUC in

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its applicable rules and regulations. SBC CONNECTICUT's wholesale tariff, Section 18, further documents requirements for Local Exchange Carrier changes and required End-User authorizations.

24.2.2 The Parties agree to the re-use of existing network facilities when an End-User changes its provider of local exchange service and the network facilities are provided by the same network provider.

25. COMPLIANCE AND CERTIFICATION

25.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

25.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Interconnection, Resale Services, Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.

25.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

25.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

26. LAW ENFORCEMENT

26.1 SBC-12 STATE and LEVEL 3 shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

26.1.1 Intercept Devices:

26.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End-User of the other Party, it shall refer such request to the Party that serves such End-User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of

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intercept on the Party's facilities, in which case that Party shall comply with any valid request.

26.1.2. Subpoenas:

26.1.2.1 If a Party receives a subpoena for information concerning an End-User the Party knows to be an End-User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End-User's service provider, in which case that Party will respond to any valid request.

26.1.3 Emergencies:

26.1.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End-User of the other Party, that Receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or Losses arising from compliance with such requests on behalf of the other Party's End-User and the Party serving such End-User agrees to indemnify and hold the other Party harmless against any and all such claims or Losses.

26.2 SBC CONNECTICUT and LEVEL 3 shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

26.2.1 Each of the Parties agree to comply with the applicable state and federal law enforcement authorities, laws, and requirements, including but not limited to, the Communications Assistance for Law Enforcement Act (CALEA) and to report to applicable State and Federal law enforcement authorities as required by law, the Telecommunications Services and related information provided by each of the Parties in Connecticut.

27. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

27.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall

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be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

- 27.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

28. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

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

29. ASSIGNMENT

- 29.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of the Other Party, however, such consent shall not be unreasonably withheld; provided however, that the withholding of consent to an assignment or transfer that has been approved by all jurisdictional bodies whose approval is required by law shall be unreasonable. Either Party may assign or transfer this Agreement to its Affiliate by providing ninety (90) days' prior written notice to the Other Party of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including the Affiliate's

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obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, LEVEL 3 may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate if that Affiliate is a party to a separate interconnection agreement with SBC-13STATE under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is neither permitted by this Section 29.1 nor otherwise agreed to by the Parties in writing is void ab initio.

- 29.2 As ordered by the Michigan PSC in Docket U-12460 and the Texas PUC in Docket No. 22441, during the Term of this Agreement, SBC MICHIGAN shall obtain LEVEL 3's prior written approval before it sells, assigns or otherwise transfers any of its ILEC Territory or ILEC Assets. LEVEL 3's prior written approval shall not be unreasonably withheld. SBC TEXAS shall provide LEVEL 3 not less than sixty (60) days prior written notice of such sale, assignment or transfer.

30. DELEGATION TO AFFILIATE

- 30.1 Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliate(s) to take some or all of such actions to fulfill such obligations. Upon such delegation, the Affiliate shall become a primary obligor hereunder with respect to the delegated matter, but such delegation shall not relieve the delegating Party of its obligations as co-obligor hereunder. Any Party which elects to perform its obligations through an Affiliate shall cause its Affiliate to take all action necessary for the performance of such Party's obligations hereunder. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate, such Party has the authority to cause such Affiliate to perform such obligation and such Affiliate will have the resources required to accomplish the delegated performance.

31. SUBCONTRACTING

- 31.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 31.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 31.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 31.4 No contract, subcontract or other agreement entered into by either Party with any

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Third Party in connection with the provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

- 31.5 Any subcontractor that gains access to CPNI or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

32. HAZARDOUS SUBSTANCES AND RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

- 32.1 Each Party shall be solely responsible at its own expense (including costs, fines, and fees) for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, legal disposition, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.
- 32.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, SBC-13STATE shall, at LEVEL 3's request, indemnify, defend, and hold harmless, LEVEL 3 each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by SBC-13STATE or any person acting on behalf of SBC-13STATE, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by SBC-13STATE or any person acting on behalf of SBC-13STATE, or (iii) the presence at the work location of an Environmental Hazard for which SBC-13STATE is responsible under Applicable Law or a Hazardous Substance introduced into the work location by SBC-13STATE or any person acting on behalf of SBC-13STATE.
- 32.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, LEVEL 3 shall, at SBC-13STATE's

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request, indemnify, defend, and hold harmless SBC-13STATE, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by LEVEL 3 or any person acting on behalf of LEVEL 3, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by LEVEL 3 or any person acting on behalf of LEVEL 3, or (iii) the presence at the work location of an Environmental Hazard for which LEVEL 3 is responsible under Applicable Law or a Hazardous Substance introduced into the work location by LEVEL 3 or any person acting on behalf of LEVEL 3.

- 32.4 For the purposes of this agreement, "Hazardous Substances" means 1) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, 2) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or 3) asbestos and asbestos containing material in any form, and 4) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.
- 32.5 For the purposes of this agreement, "Environmental Hazard" means 1) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, 2) asbestos containing materials, or 3) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 32.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into 1) the work location, or 2) other environmental media, including but not limited to, the air, ground or surface water, or soil.

33. FORCE MAJEURE

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

34. TAXES

- 34.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 34.2 With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to

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the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

- 34.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End-User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End-User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 34.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 34.5 If the purchasing Party fails to impose and/or collect any Tax from End-Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End-Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

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- 34.6 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 34.7 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 34.8 With respect to any Tax or Tax controversy covered by this Section 34, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 34.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 34 shall be sent in accordance with Section 17 hereof.

35. NON-WAIVER

- 35.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party

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

36. NETWORK MAINTENANCE AND MANAGEMENT

- 36.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.
- 36.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End-Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 36.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 36.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 36.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to other End-User. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications

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for planned mass calling events.

- 36.6 Neither Party shall use any Interconnection, Resale Service, Network Element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with any Party in the use of such Party's Telecommunications Service, prevents any Party from using its Telecommunications Service, impairs the quality of Telecommunications Service to other carriers or to either Party's End-Users, causes electrical hazards to either Party's personnel, damage to either Party's facilities or equipment or malfunction of either Party's ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

37. SIGNALING

- 37.1 The Parties will Interconnect their networks using SS7 signaling as defined in GR-000317-CORE and GR-000394-CORE, including ISDN User Part (ISUP) for trunk signaling and Transaction Capabilities Application Part (TCAP) for CCS-based features in the Interconnection of their networks. Each Party may establish CCS interconnections either directly and/or through a Third Party. If CCS interconnection is established through a Third Party, the rates, terms, and conditions of the Parties' respective tariffs will apply. If CCS interconnection is established directly between LEVEL 3 and SBC-13STATE, the rates, terms, and conditions of Appendix SS7 will apply.
- 37.2 The Parties will cooperate in the exchange of TCAP messages to facilitate full interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its own End-Users. All CCS signaling parameters deployed by both Parties will be provided including CPN. All privacy indicators will be honored.

38. TRANSMISSION OF TRAFFIC TO THIRD PARTIES

- 38.1 SBC-13STATE will provide LEVEL 3 with transit service in accordance with the terms and conditions of Appendix Interconnection Trunking Requirements (ITR). LEVEL 3 agrees to use reasonable efforts to enter into agreements with Third Party carriers that exchange traffic with LEVEL 3 pursuant to the terms and conditions of Appendix ITR. Subject to the requirements of Appendix ITR, SBC-13STATE shall provide at least two months' notice in writing prior to

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ceasing to provide transit service.

39. CUSTOMER INQUIRIES

39.1 Each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

39.2 Each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

39.2.1 Provide the number described in Section 39.1 to callers who inquire about the other Party's services or products; and

39.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

39.3 Except as otherwise provided in this Agreement, LEVEL 3 shall be the primary point of contact for LEVEL 3's End-Users with respect to the services LEVEL 3 provides such End-Users.

39.4 LEVEL 3 acknowledges that SBC-13STATE may, upon End-User request, provide services directly to such End-User similar to those offered to LEVEL 3 under this Agreement.

40. EXPENSES

40.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.

40.2 SBC-12STATE and LEVEL 3 shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees and any costs of notice or publication, but not including attorney's fees) associated with the filing of this agreement.

41. CONFLICT OF INTEREST

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

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42. SURVIVAL

42.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 5.5; Section 5.6, Section 7.3; Section 8.1; Section 8.4; Section 8.5; Section 8.6; Section 8.7; Section 10, Section 11; Section 13; Section 14; Section 15; Section 16.1; Section 18; Section 19; Section 20; Section 22; Section 25.4; Section 26.1.3; Section 32; Section 34 and Section 42.

43. SCOPE OF AGREEMENT

43.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein. Nothing herein is intended to affect or abridge either Party's rights or obligations under Section 252(i) of the Act, nor is anything herein intended to modify SBC-13STATE's obligation to provide services and facilities under the Act.

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

44. AMENDMENTS AND MODIFICATIONS

44.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions and such amendment will not require a refund, true-up or retroactive crediting or debiting prior to the approval of the Amendment unless such Amendment expressly provides therefore. SBC-12STATE and LEVEL 3 shall each be responsible for its share of the publication

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expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

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

45. INTENTIONALLY LEFT BLANK

46. AUTHORITY

- 46.1 Each of the SBC-owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of its state of incorporation or formation; that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for that SBC-owned ILEC; and that it has full power and authority to perform its obligations hereunder.
- 46.2 LEVEL 3 represents and warrants that it is a corporation, limited liability corporation or other business entity duly organized, validly existing and in good standing under the laws of its state of incorporation or formation; and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.
- 46.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

47. COUNTERPARTS

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

48. ENTIRE AGREEMENT

- 48.1 SBC-12STATE

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48.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

48.2 SBC CONNECTICUT

48.2.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, Commission approved tariffs and other documents or instruments referred to herein and incorporated into this Agreement by reference constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

49. **MOST FAVORED NATIONS PURSUANT TO SECTION 252(I)**

49.1 Nothing in this Agreement shall be construed to prevent either Party from exercising any rights it may hold under Section 252(i) of the Act, nor shall anything in this Agreement be construed to excuse either Party from any obligations it may bear under Section 252(i) of the Act.

GENERAL TERMS AND CONDITIONS-~~SBC-13STATE~~

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SBC-13STATE/LEVEL 3

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SBC-13STATE Agreement

Signatures

Level 3 Communications, LLC

**Illinois Bell Telephone Company d/b/a SBC
Illinois, Indiana Bell Telephone Company
Incorporated d/b/a SBC Indiana, Michigan
Bell Telephone Company d/b/a SBC
Michigan, Nevada Bell Telephone Company
d/b/a SBC Nevada, The Ohio Bell Telephone
Company d/b/a SBC Ohio, Pacific Bell
Telephone Company d/b/a SBC California,
The Southern New England Telephone
Company d/b/a SBC Connecticut and
Southwestern Bell Telephone, L.P. d/b/a
SBC Arkansas, SBC Kansas, SBC Missouri,
SBC Oklahoma and/or SBC Texas, and
Wisconsin Bell, Inc. d/b/a SBC Wisconsin
by SBC Operations, Inc., its authorized
agent**

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____

Title: _____
(Print or Type)

Title: AVP-Local Interconnection Marketing

Date: _____

Date: _____

AECN/OCN# _____
(Facility Based – if applicable)

EXHIBIT B

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LEVEL 3 COMMUNICATIONS

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P.07

1st Amendment Superseding Certain Intercarrier Compensation
Interconnection and Trunking Provisions
SBC ILECs/Level 3 Communications, LLC
February 10, 2005

*First Amendment
Superseding Certain Intercarrier Compensation,
Interconnection and Trunking Provisions*

This First Amendment Superseding Certain Intercarrier Compensation, Interconnection and Trunking Terms ("First Amendment") is applicable to this and any future Interconnection Agreement as provided herein between SBC Operations, Inc. ("SBC") on behalf of and as agent for Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC SNET, and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, SBC Oklahoma, SBC Texas, SBC Arkansas, and SBC Kansas and any of its future Affiliates or subsidiaries which are the Incumbent Local Exchange Carrier (hereinafter each individually being a "SBC ILEC," and collectively being the "SBC ILECs") and Level 3 Communications, LLC and any of its future Affiliates or subsidiaries which are a Certified Local Exchange Carrier ("Level 3"), in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut from January 1, 2005 through and including the Termination Date, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) "Most Favored Nation" ("MFN") rights. Each of the SBC ILECs and Level 3 may be referred to individually as "Party," or collectively as the "Parties";

WHEREAS, SBC ILECs and Level 3 entered into interconnection agreements pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") that were approved by the applicable state commissions (the "ICAs"); and

WHEREAS, SBC ILECs and Level 3 agree that they would not have agreed to this First Amendment except for the fact that it was entered into on a 13-State basis and included the totality of rates, terms and conditions listed herein;

WHEREAS, for the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, the Parties entered into a Second Amendment to Level 3 Contracts Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms which expired on December 31, 2004; and

WHEREAS, for the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, the Parties desire to extend the Amendment for the period from January 1, 2005 up through and including the Termination Date subject to the modifications set forth herein.

NOW, THEREFORE, for and in consideration of the promises, mutual promises and covenants contained in this First Amendment, and other good and valuable

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LEVEL 3 COMMUNICATIONS

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1st Amendment Superseding Certain Intercarrier Compensation
Interconnection and Trunking Provisions
SBC ILEC/Level 3 Communications, LLC
February 10, 2005

consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Term, Scope of Agreement and Look In:

1.1 The term of this First Amendment shall commence on January 1, 2005 and shall continue until December 31, 2006 ("Termination Date"). Thereafter, provided that Level 3 does not MFN into or otherwise adopt an underlying Interconnection Agreement with a term ending after December 31, 2006, this Amendment will remain in full force and effect unless terminated by either Party according to the terms and conditions of the underlying Interconnection Agreement to which this First Amendment applies. The Parties agree that this First Amendment will act to supersede, amend and modify the applicable provisions currently contained in the ICAs. This First Amendment shall also be incorporated into and become a part of, by exhibit, attachment or otherwise, and shall supersede, amend, and modify the applicable provisions of, any future interconnection agreement(s) between the Parties for the period from January 1, 2005¹ up through and including the Termination Date, whether negotiated, arbitrated, or arrived at through the exercise of Section 252(i) MFN rights.

1.2 Any inconsistencies between the provisions of this First Amendment and other provisions of the current ICAs or future interconnection agreement(s) described above for the period from January 1, 2005 through and including the Termination Date, will be governed by the provisions of this First Amendment, unless this First Amendment is specifically and expressly superseded by a future amendment between the Parties.

1.3 If the underlying ICAs or any future interconnection agreement(s) expire sooner than the Termination Date, the Parties agree that the First Amendment shall not extend, or otherwise alter the term and termination rights of the underlying ICAs or any future interconnection agreement(s), but instead, the First Amendment will be incorporated into any successor interconnection agreement(s) between the Parties through December 31, 2006. To the extent that the date of state PUC approval of the underlying interconnection agreement precedes the date of state PUC approval of the First Amendment, the Parties agree that the rates, terms and conditions of the First Amendment will, upon state PUC approval of the First Amendment, apply retroactively to January 1, 2005.

1.4 Level 3 hereby waives its section 252(i) MFN rights; provided, however, that if another agreement contains rates, terms, and conditions for intercarrier compensation, points of interconnection or trunking that have been voluntarily agreed to

¹ It is SBC's position that notwithstanding anything to the contrary in the Agreement (including, as applicable, this Amendment and any other Amendments to the Agreement ("Agreement")), in the event that any other telecommunications carrier should adopt provisions in the Agreement pursuant to Section 252(i) of the Act ("Adopting CLEC") after January 1, 2005, such Adopting CLEC shall only be entitled to receive the rates, terms and conditions as set forth in this amendment prospectively beginning from the date that the MFN provisions become effective between ILEC and the Adopting CLEC, following the date the applicable public utilities commission approves or is deemed to have approved the Adopting CLEC's Section 252(i) adoption ("Section 252(i) Effective Date"). In no event shall an Adopting CLEC be entitled to the application of the rates, terms and conditions under its MFN Provisions to a date prior to its Section 252(i) Effective Date.

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Interconnection and Trunking Provisions
SBC ILECs/Level 3 Communications, LLC
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by SBC ILEC across the thirteen-state region as a whole, Level 3 may exercise its rights under section 252(j) to obtain the agreement in its entirety provided that the agreement is otherwise available for adoption. This waiver includes, but is not limited to, any lease, transfer, sale or other conveyance by Level 3 of all or a substantial portion of its assets, in which case Level 3 shall obtain the purchaser's agreement to be bound by the terms and conditions set forth herein, but only as to that portion of purchaser's operations resulting from the purchase of Level 3

2.0 Change of Law:

2.1 During the period from January 1, 2005 up through and including the Termination Date, the Parties waive any rights they may have under the Parties' current ICAs or any future interconnection agreement(s) to which this First Amendment is added, or any other amendments thereto with respect to Total Compensable Local Traffic (as defined herein), POIs or trunking requirements that are subject to this First Amendment, except as set forth in Sections 7 below. Provided, however, that if the FCC acts without issuing an order in the *Level 3, LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)* WC Docket 03-266, (filed Dec. 23, 2003) ("*Level 3 Forbearance Petition*") or the *Level 3 Forbearance Petition* otherwise takes effect by operation of Section 10 of the Act or if the FCC issues an order in CC Docket 96-98, the FCC's rulemaking in *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket 0192, established in Notice of Proposed Rulemaking Order No. 01-132 (April 27, 2001) and/or *In the Matter of IP Enabled Services*, WC Docket 04-36 (collectively or individually "FCC Order"), the affected provisions of this Amendment relating to reciprocal compensation, Total Compensable Local Traffic (as defined herein), POIs or trunking requirements shall be invalidated, modified, or stayed, consistent with such FCC Order, with such invalidation, modification, or stay becoming effective only upon the date of the written request of either Party once the FCC Order has become effective (the "Written Request"). In such event, upon receipt of the Written Request, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the ICAs, future interconnection agreement(s) and Amendment (including any separate amendments to such agreements). If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such FCC Order shall be resolved pursuant to the dispute resolution process provided for in the ICAs or future interconnection agreement(s), provided, however, that the rates, terms and conditions ultimately ordered by a state commission, court, or other body of competent jurisdiction in the complaint proceeding or negotiated by the Parties during the dispute resolution process shall be retroactive to the effective date of the Written Request following such FCC Order. Except with respect to the specific exceptions in this Section 2.2 as to the specific provisions relating to Total Compensable Local Traffic (as defined herein), POIs or trunking requirements, during the time period from January 1, 2005 up through and including the Termination Date, each Party shall otherwise have full intervening law rights under the underlying ICAs or future interconnection agreement(s), and may invoke such intervening law/change in law rights as to any provisions in the

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Agreement (including any separate amendments to the Agreement) impacted by any regulatory, legislative or judicial action.

3.0 Reservations of Rights:

3.1 Notwithstanding the remedies set forth in Section 7.0 and any other remedies or procedures reflected herein, SBC or Level 3 may also elect, at their sole discretion, to immediately pursue their legal remedies against each other and/or any other carrier in a court of law or other venue in lieu of or in addition to the remedies or procedures set forth herein.

3.2 When traffic is misclassified as set forth herein, both Parties shall fully cooperate, to the fullest extent allowed by law, in the assertion and/or prosecution of any claims, defense or other actions against other carriers.

3.3 Except as specifically modified by this First Amendment with respect to their mutual obligations herein and subject to Section 2.0, and including, but not limited to: (1) whether ISP calls constitute local traffic and is or is not subject to reciprocal compensation obligations; (2) what should be the appropriate treatment (compensation and routing/trunking) of IP-PSTN traffic and what facilities should be used to transport such traffic; and (3) what should be the appropriate treatment (compensation and routing) of Virtual Foreign Exchange traffic, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body. The Parties further agree that nothing in this First Amendment shall be construed as an admission on the matters set forth above and that neither Party will claim, in any forum, that the matters set forth herein indicated the other Party's agreement or acquiescence that the arrangements set forth herein are the proper arrangements under Section 251 of the Act.

4.0 Network Architecture Requirements:

4.1 In California and Illinois, Level 3 will establish a physical point of interconnection ("POI") in each mandatory local calling area. The Parties agree that this requirement is satisfied if Level 3 (at its sole option) establishes a POI either:

(i) at each SBC access or local tandem and each end office where Level 3 maintains a physical collocation arrangement (but only for those trunk groups associated with that end office); or

(ii) within 15.75 miles of the Vertical and Horizontal coordinate of each local calling area where an SBC end office does not subtend an SBC tandem.

4.2 In Connecticut, Indiana, Michigan, Nevada, Ohio, and Wisconsin, Level 3 will establish a POI in each mandatory local calling area. The Parties agree that this requirement is satisfied if Level 3 establishes a POI at each SBC access or local tandem

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and at an End Office not served by a SBC Tandem when traffic to that end office exceeds 6 DSIs at peak over three (3) consecutive months.

4.3 In Texas, Oklahoma, Missouri, Kansas and Arkansas, Level 3 will establish a POI in 80% of the total number of mandatory local calling areas within each state ("MLCA POIs"). Once Level 3 has established such MLCA POIs in 80% of the total number of mandatory local calling areas within a state:

(i) Level 3 shall maintain its existing MLCA POIs within that state; and

(ii) and for mandatory local calling areas where Level 3 has not established a POI Level 3 will establish or maintain at least one POI per LATA and will establish additional POIs:

(a) at a tandem separate from the existing POI arrangement, when traffic to that tandem and its subtending end offices exceeds twenty-four DSIs at peak over three (3) consecutive months; or

(b) at an End Office not served by a SBC Tandem when traffic to that end office exceeds 6 DSIs at peak busy hour over three (3) consecutive months.

4.4 The additional POI(s) will be established within 90 days of notification that the threshold has been met.

4.5 Level 3 shall be financially responsible for one hundred percent (100%) of the facilities, trunks, and equipment on its side of the POI. The financial responsibility for the facilities, trunks and equipment on SBC's side of POI shall be shared by the Parties based on the percentage of traffic carried over the facility that is interLATA and intraLATA access traffic out of the total interLATA, Section 251(b)(5), ISP-bound and intraLATA traffic carried over the facility. Level 3 shall be financially responsible for the percentage of the facility cost equivalent to the percentage of the interLATA and intraLATA access traffic that is transported over that facility. The portion of the facility cost that is equivalent to the percentage of IP-PSTN traffic transported over the facility will be placed by Level 3 into the escrow account addressed in Section 7 herein and shall be subject to all terms and conditions of Section 7. The parties will use the transport rate set forth in the state and interstate SBC switched access tariffs corresponding to the location of the facility as a proxy for determining the rates Level 3 will pay for its percentage. For example, but not by way of limitation, if 20% of the traffic transported over a particular facility is intraLATA and interLATA access traffic Level 3 will pay to SBC an amount equal to 20% of the tariffed switched access rate transport rate for interLATA traffic for the facility used to carry such traffic.

4.6 Level 3 may, at its sole option, establish a POI by obtaining dedicated Special Access services or facilities from SBC ILECs (without the need for Level 3 equipment, facilities, or collocation at the SBC ILECs' offices), or services or facilities from a First party, by establishing collocation, , or by provisioning such services or

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facilities for itself. If Level 3 utilizes dedicated Special Access facilities, it shall be required to begin paying SBC ILEC for such facilities once the facilities are jointly tested and accepted at a trunk level.

4.7 The Parties will use the interconnection architecture described in this Section 4 ("Interconnection Arrangements") to exchange Section 251(b)(5), ISP-bound, IP-PTN, PSTN-IP, intraLATA and interLATA traffic exchanged between (i) SBC and users and Level 3 and users or Level 3 customers' end users or (ii) Level 3 and end users served by First party telecommunications carriers using an SBC non-resale offering whereby SBC provides the end office switching on a wholesale basis. If Level 3 desires to act as a presubscribed interexchange carrier ("PIC") and desires to route such PIC traffic over the interconnection architecture, Level 3 will make a written request, and subject to the Parties' mutual agreement, the Parties will negotiate in good faith to evaluate the feasibility of transporting such traffic. If Level 3 utilizes the interconnection architecture described in Section 4 for purposes other than those set forth in this Section 4.7, Level 3 will compensate SBC for the carriage of such traffic and contact the terminating carrier to make appropriate compensation arrangements.

4.7.1 Indemnification:

4.7.1.1 Notwithstanding the indemnification provisions in the underlying interconnection agreement to which this Amendment applies, where Level 3 utilizes the interconnection architecture for purposes other than those specified in Section 4.7 herein and SBC provides information that identifies Level 3 as having routed such traffic to a First party carrier in violation of section 4.7 and such carrier brings legal action against SBC for such traffic, Level 3 will also indemnify and defend and hold harmless SBC against such carrier(s) seeking compensation for such traffic to the extent such indemnification and hold harmless is related to the aforementioned traffic.

4.8 Level 3 agrees to abide by SBC ILECs' trunk engineering/administration guidelines as stated in the ICAs.

4.9 The Parties recognize that embedded one-way interconnection trunks may exist. Within forty five (45) days of the execution of this amendment, the Parties will agree to a transition plan to migrate the embedded one-way trunks to two-way trunks via a method described in Appendix NIM, which shall include a cutover and project management plan. The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule.

4.10 Subject to Section 4.12 in order to qualify for receipt of reciprocal compensation for Total Compensable Local Traffic in a given tandem serving area as provided in this amendment, Level 3 will achieve and maintain a network architecture within that tandem serving area such that Direct End Office Trunking ("DEOT") does not fall below 70% of total trunking within such tandem serving area for two consecutive months. Subject to Section 4.11, if Level 3 has not established a POI required by this

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Section 4.0, Level 3 shall not be entitled to intercarrier compensation for calls from that local calling area.

4.11 For new interconnections, Level 3 will achieve the DEOT criteria identified in Section 4.9 no later than six (6) months (or such other period as may be agreed to by the Parties) after the parties first exchange traffic for each new interconnection arrangement.

4.12 Under no circumstances shall Level 3 have any liability or otherwise be penalized under this First Amendment for non-compliance with the applicable POI and DEOT criteria specified herein during the transition period identified in Section 4.10. Furthermore, Level 3 will have no liability and will face no penalty for non-compliance with the POI and DEOT criteria specified herein at any time thereafter if such non-compliance results from SBC ILEC's inability to provide staffing, collocation space, trunking, or facilities necessary to satisfy the transition or from SBC ILEC's failure to perform required network administration activities (including provisioning, activation, and translations), regardless of whether SBC ILEC's inability or failure to perform is related to a Force Majeure event as that term is described in the underlying ICAs.

4.12.1 Establishing a New POI where Level 3 provides service as of the date of execution of this First Amendment: Level 3 will notify SBC ILEC of Level 3's intention to establish a new POI in an existing local calling area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) no later than 90 days prior to the end of the transition period by letter to the SBC ILEC Account Manager and project manager for Level 3. Level 3 and SBC ILEC will meet within 10 business days of such notice to plan the transition to any new POI. This notice and subsequent meeting are intended to give both parties adequate time to plan, issue orders, and implement the orders in the transition period under Section 4.10. Nothing in this paragraph specifically or this First Amendment generally shall prevent Level 3 from ordering, or excuse SBC ILECs from provisioning, trunks with respect to an existing POI for new growth or augmentations during the time that a new POI is being established.

4.12.2 Establishing a POI where Level 3 does not provide service as of the date of execution of this Amendment: Level 3 will notify its SBC ILEC Account Manager no later than 90 days prior to the LERG effective date for the new NPA-NXXs it wishes to activate. Joint planning meetings for the new POI will be held within 10 business days of SBC ILEC's receipt of such notification. The outcome of the joint planning meeting will be orders for facilities and trunks for the new POI to complete the establishment of the POI as promptly as possible, and in any event, by the LERG effective date for the new NPA-NXX. The POI must be established in the applicable Local Calling Area (or other applicable serving area in California, Nevada, Connecticut, and Ameritech territory) prior to the exchange of live traffic.

4.13 At any time as a result of either Party's own capacity management assessment, the Parties may begin the provisioning process. The intervals used for the

1st Amendment Superseding Certain Intercarrier Compensation
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provisioning process will be the same as those used for SBC ILECs' Switched Access service.

4.14 The movement of existing trunks to new POIs, either on a rollover basis or a disconnect and add basis, will not be counted against any limitations otherwise placed on Level 3's ability to order and receive trunks in any given market.

4.15 In a blocking situation, Level 3 may escalate to its SBC ILEC Account Manager in order to request a shorter interval. The SBC ILEC Account Manager will obtain the details of the request and will work directly with the SBC ILEC LSC and network organizations in order to determine if Level 3's requested interval, or a reduced interval, can be met.

5.0 Compensable Traffic:

5.1 If Level 3 designates different rating and routing points such that traffic that originates in one rate center terminates to a routing point designated by Level 3 in a rate center that is not local to the calling party even though the called NXX is local to the calling party, such traffic ("Virtual Foreign Exchange" traffic) shall be rated in reference to the rate centers associated with the NXX prefixes of the calling and called parties' numbers, and treated as Local traffic for purposes of compensation.

5.2 Section 251(b)(5) traffic, Virtual Foreign Exchange, Mandatory Local, Optional EAS traffic will be combined with traffic terminated to Internet Service Providers (ISPs) to determine the Total Compensable Local Traffic.

5.3 For intrastate and interstate toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's applicable Tariffs, but such compensation shall not exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located.

5.4 Except as provided in Section 7.0 herein, all traffic terminated to SBC end users by Level 3 (including, but not limited to IP-PSTN traffic as defined herein), will be treated as if it were originated by Level 3 and compensated accordingly.

6.0 Rate Structure and Rate Levels:

Total Compensable Local Traffic as defined herein will be exchanged in all states at the rates set forth below. These rates shall be payable to the party on whose network the call is terminating, and shall apply symmetrically for traffic originated by one party and terminated on the other party's network.

January 1, 2005 to June 30, 2005:	\$.00050 per minute of use;
July 1, 2005 to December 31, 2005:	\$.00045 per minute of use;
January 1, 2006 to Termination Date:	\$.00040 per minute of use.

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In the event that this First Amendment continues beyond the Termination Date as set forth in Section 1.1, the Parties agree that the rate for Total Compensable Local Traffic shall be \$.00035 per minute of use.

7.0 IP-PSTN Traffic

7.1 For purposes of this agreement, Internet Protocol - Public Switched Telephone Network Traffic ("IP-PSTN Traffic") is defined as traffic that originates in IP format over a broadband connection, is transmitted to the IP service provider in IP format, is converted from IP format to circuit switched format and is terminated to a party served by a circuit switch; and/or,

7.2 For purposes of this agreement, Public Switched Telephone Network - Internet Protocol Traffic ("PSTN-IP Traffic") is defined as traffic that originates from a party served by a circuit switch, is converted from circuit-switched format to IP format, is transmitted by the IP service provider in IP format, and is terminated in IP format except that traffic PIC'd to an LXC is not included in this definition.

7.3 The Party delivering IP-PSTN Traffic for termination to the other Party's end user customer (the "Delivering Party") shall pay to the other party the rate for Total Compensable Local Traffic as defined in Section 6 above. On a monthly basis, no later than the 15th day of the succeeding month to which the calculation applies, the Delivering Party shall report its calculation of the difference between the amounts Level 3 paid to SBC for terminating such traffic (at rates applicable to Total Compensable Local Traffic (as defined herein)) and the amounts Level 3 would have paid had that traffic been rated according to SBC's intrastate or interstate switched access tariffs based upon originating and terminating NPA-NXX ("Delta"). By the first day of the following month, the Parties will agree on the amount of the Delta. At such time as the Delta exceeds \$500,000 the Parties will negotiate resolution of the Delta for a period not to exceed eleven (11) business days. If the Parties are unable to reach resolution, Level 3 shall pay the Delta into an interest bearing escrow account with a First Party escrow agent mutually agreed upon by the Parties.

7.4 To be acceptable, the escrow agent and escrow account must meet all of the criteria established in the General Terms and Conditions of the Parties' underlying Interconnection Agreement except disbursements from the escrow account will be limited to those authorized in writing by both Parties.

7.5 If SBC determines in good faith in any month that 2% or more of the traffic originated by Level 3 and/or its customers is classified by Level 3 (1) as IP-PSTN Traffic when it is not IP-PSTN Traffic (e.g. it is PSTN-IP-PSTN traffic), or (2) as traffic subject to the Total Compensable Local Traffic rate, when in reality the traffic is subject to the terminating party's state or federal switched access tariff the Parties agree:

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(i) SBC will provide sufficient call detail records or other information (including the reasons that SBC believes the traffic is misidentified) to permit Level 3 to investigate and identify the traffic SBC has determined is misidentified;

Level 3 shall correct the classification for such traffic

a. Pay the Delta for traffic previously terminated and billed as Total Compensable Local Traffic; and

b. Pay the appropriate tariffed switched access rates for traffic terminated but not yet billed.

(iii) Level 3 shall pay SBC the applicable tariffed switched access rates for all misclassified traffic;

(iv) the Parties agree that if more than 2% of the total traffic exchanged is misclassified, there is a presumption that the misclassification is intentional, rebuttable by Level 3. Level 3 will pay SBC twice the rate of the switched access applicable to such misclassified traffic terminated by SBC.

7.6 If SBC determines that any traffic terminated to SBC by Level 3 that is not originated by Level 3 or its customer is classified (1) as IP-PSTN Traffic when that traffic is not IP-PSTN Traffic (e.g. it is PSTN-IP-PSTN traffic), or (2) as traffic subject to the Total Compensable Local Traffic rate, when in reality the traffic is subject to terminating party's intrastate or interstate switched access tariff the Parties agree:

(i) SBC will provide sufficient call detail records or other information (including the reasons that SBC believes the traffic is misidentified) to permit Level 3 to investigate and identify the traffic SBC has determined is misidentified;

(ii) Level 3 will provide a written response to SBC within ten (10) business days;

(iii) Level 3 will take such actions as appropriate and lawful to correct the misclassification of all such misclassified traffic;

(iv) Level 3 will pay SBC the applicable switched access rates for all such misclassified traffic; or provide information and affirmative assistance requested by SBC in its effort to recover the appropriate compensation for the misclassified traffic;

(v) to cooperate in the investigation and recovery of the appropriate compensation for the misclassified traffic from the appropriate party.

7.7 Each month, Level 3 agrees to provide, in electronic format, a call detail record for each call that Level 3 delivers to SBC and for each call that SBC delivers to a

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Level 3 customer utilizing IP service. Such call detail records shall contain, at a minimum, the following information: Message Date (MM/DD/YY); Originating Number; Terminating Number; Terminating LRN; Connect Time; and Elapsed Time. Additionally Level 3 agrees to provide information sufficient to classify the traffic (Total Compensable Traffic, IP-PSTN, Intrastate Switched Access, Interstate Switched Access, and such other information as necessary to calculate the Delta as set forth in Section 7 of this First Amendment).

7.8 This Section 7.0 shall remain in effect until the effective date of an FCC Order or addressing compensation for IP-PSTN/ PSTN -IP traffic, at which time the Parties agree to allocate the Delta identified in Section 7.3 in a manner consistent with such Forbearance Petition or FCC order and the affected provisions shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court or regulatory agency upon the written request of either Party. In such event, the Parties shall amend this First Amendment within forty-five (45) days to incorporate appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

7.9 Nothing herein shall be deemed to represent a waiver by either Party of any rights with respect to any of the matters addressed in the aforementioned FCC proceedings, including but not limited rights of reconsideration, appeal, and assertions of rights with regard to intercarrier compensation.

8.0 PSTN-IP-PSTN Traffic

8.1 PSTN-IP-PSTN Traffic is defined as traffic that originates from a party served by a circuit switch, is converted from circuit-switched format to IP format, is transmitted by the IP service provider in IP format, is converted from IP format to circuit switched format and is terminated to a party served by a circuit switch.

8.2 PSTN-IP-PSTN Traffic is subject to the either Total Compensable Local Traffic rate or the appropriate intrastate or interstate switched access rate in accordance with Section 5.

9.0 Additional Terms and Conditions:

9.1 Severability. If any provision of this First Amendment, or part thereof, shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not invalidate the entire First Amendment, unless such construction would be unreasonable. The First Amendment shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly. Provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this

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First Amendment and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or alternative provisions or arrangements..

9.2 Confidentiality - In addition to the confidentiality obligations contained within the Agreement to which this First Amendment applies, the parties recognize that the degree to which information to be shared pursuant to the Amendment is subject to all applicable state and federal laws and regulations, along with whatever contractual obligations, if any, either Party may have relative to customer information. In the event a restriction on the release of such information exists as referenced in the preceding sentence, the Parties agree to cooperate to remove any such barriers.

9.3 Except as specifically modified by this First Amendment with respect to their mutual obligations herein and subject to Section 2.0, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

9.4 This First Amendment is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

9.5 The terms contained in this First Amendment constitute the agreement with regard to the superseding, modification, and amendment of the ICAs and incorporation into future interconnection agreement(s) through December 31, 2006, and shall be interpreted solely in accordance with their own terms.

9.6 The headings of certain sections of this First Amendment are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this First Amendment.

9.7 This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

9.8 SBC Telecommunications, Inc. hereby represents and warrants that it is authorized to act as agent for, and to bind in all respects as set forth herein, the individual SBC ILECs. Level 3 hereby represents and warrants that it is authorized to act as agent for, and to bind in all respects as set forth herein, all Affiliates.

9.9 Upon expiration or termination of this Agreement, the obligations of the underlying ICA apply to the Parties, unless otherwise agreed. However, any liabilities or obligations of a Party for acts or omissions prior to the expiration or termination of this

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First Amendment and any other provisions of this First Amendment which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, including, but not limited to Section 7.8, will survive cancellation or termination thereof.

10.0 Definition of Affiliate

As used above, the term "Affiliate" shall mean as defined in the Act.

Level 3 Communications, LLC

SBC ILEC's by SBC Operations, Inc., its
authorized agent

Signature: Kevin Dundon

Signature: Glen Sirles

Name Kevin Dundon

Name: GLEN SIRLES

Title: Sr Vice President, Wholesale
Industry Markets

^{PS}
Title: President - Industry Markets

Date: February 10, 2005

Date: 02-10-2005

AECN/OCN: _____