



Control Number: 40565



Item Number: 1

Addendum StartPage: 0

AT&T Texas

July 16, 2012

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TABLE OF CONTENTS

INTERCONNECTION

DOCKET NO. 40565

**JOINT APPLICATION OF SOUTHWESTERN BELL TELEPHONE
COMPANY d/b/a AT&T TEXAS AND ALPHEUS DATA SERVICES,
L.L.C. FOR APPROVAL OF INTERCONNECTION AGREEMENT
UNDER PURA AND THE TELECOMMUNICATIONS ACT OF 1996**

| | <u>PAGE(S)</u> |
|--|-----------------------|
| I. Joint Application | 2 - 3 |
| II. Attachment I Interconnection Agreement | 4 - 462 |
| III. Attachment II Affidavit of Patrick Doherty | 463 - 464 |
| IV. Attachment III Affidavit of Patricia M. Hogue | 465 - 466 |

July 16, 2012

Commission Filing Clerk
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

Re: Joint Application of Southwestern Bell Telephone Company d/b/a AT&T Texas and Alpheus Data Services, L.L.C. for Approval of an Interconnection Agreement under PURA and the Telecommunications Act of 1996

Docket No. _____

Dear Commission Filing Clerk:

Southwestern Bell Telephone Company¹ d/b/a AT&T Texas ("AT&T TEXAS") and Alpheus Data Services, L.L.C. ("CLEC") (collectively the "Applicants") hereby submit this Joint Application ("Application") for Approval of an Interconnection Agreement ("Agreement") thereto, under the Telecommunications Act of 1996 ("the Act") and the Public Utility Regulatory Act ("PURA"), and would respectfully show the Public Utility Commission of Texas (the "Commission") the following:

I. Agreement

The Applicants present this Application for approval pursuant to the terms of Section 252 of the Act, PURA, and applicable PUC Procedural Rules.

The Applicants' Affidavits explaining how the Agreement is consistent with the public interest, convenience, and necessity, including all relevant requirements of law, are filed with this Application as Attachments II and III.

II. Request for Approval

The Applicants jointly seek the Commission's final approval of this Application, pursuant to applicable PUC Procedural Rules. The Application complies with said Rules and Section 252(e) of the Act because the proposed Agreement is pro-competitive and does not discriminate against any telecommunications carrier that is not a party thereto, and is consistent with the public interest, convenience, and necessity and consistent with other requirements of state law. There are no outstanding issues between the parties requiring mediation or arbitration.

The Applicants respectfully request that the Commission grant final approval of this Application, without change, suspension or other delay in its implementation. The Applicants do not believe a docket or intervention by other parties is necessary or appropriate.

In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement (including intervening law rights asserted by either Party via written notice as to the Separate Agreement), with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.

III. Standard for Review

The statutory standards of review are set forth in Section 252(e) of the Act and applicable Procedural Rules. The respective affidavits of the AT&T TEXAS REPRESENTATIVE, filed herein as Attachment II and the CLEC

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. On June 29, 2007, Southwestern Bell Telephone, L.P., a Texas limited partnership, was merged with and into SWBT Inc., a Missouri corporation, with SWBT Inc. as the survivor entity. Simultaneous with the merger, SWBT Inc. changed its name to Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is doing business in Texas as "AT&T Texas".

REPRESENTATIVE filed herein as Attachment III, establish that the Agreement submitted herein satisfies these standards.

IV. SPCOA Information

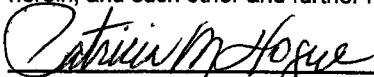
Alpheus Data Services, L.L.C. warrants that, to the extent required, it has sought and obtained approval of a SPCOA, and is duly authorized to serve the geographic area of the entire state of Texas.

V. Relief Requested

1. The Applicants request the Commission grant Final Approval of the Agreement as early as possible by Commission order.

VI. Conclusion

For the reasons set forth above, the Applicants respectfully request that the Commission grant all of the relief requested herein, and such other and further relief to which the Applicants may show themselves to be entitled.



Signature: CLEC Representative

PATRICIA M HOGUE

Name (Print)

SR V.P. Regulatory Affairs

Title (Print)

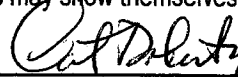
Alpheus Data Services, L.L.C.

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City, State, Zip: HOUSTON TX 77002

Telephone: 713 336 6300

Fax: 713 336 6502



Patrick Doherty

Patrick Doherty

Name (Print)

Director-Regulatory

Title (Print)

Southwestern Bell Telephone Company

d/b/a AT&T Texas

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Telephone: (214) 858-0620

Fax: (214) 464-2006

Filed by:


Senior Records Clerk
(512) 870-3770

Attachment I

INTERCONNECTION AGREEMENT-TEXAS

between

SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC TEXAS

and

CLEC

TABLE OF CONTENTS

INTERCONNECTION AGREEMENT-TEXAS

BETWEEN

SBC TEXAS

AND

CLEC

| | | |
|-----|--|----|
| 1. | <u>Introduction</u> | 7 |
| 2. | <u>Effective Date, Term and Termination (Amended 03/2007)</u> | 8 |
| 3. | <u>Change in Applicable Law/Reservation of Rights</u> | 9 |
| 4. | <u>Intentionally Left Blank</u> | 10 |
| 5. | <u>Assignment</u> | 10 |
| 6. | <u>Confidentiality and Proprietary Information</u> | 10 |
| 7. | <u>Liability, Indemnification, Intellectual Property and Insurance</u> | 12 |
| 8. | <u>Payment of Rates and Charges, Deposits</u> | 19 |
| 9. | <u>Dispute Resolution</u> | 27 |
| 10. | <u>Non-Payment</u> | 29 |
| 11. | <u>Notices</u> | 31 |
| 12. | <u>Taxes</u> | 32 |
| 13. | <u>Force Majeure</u> | 34 |
| 14. | <u>Publicity</u> | 34 |
| 15. | <u>Network Maintenance and Management</u> | 35 |
| 16. | <u>Law Enforcement and Civil Process</u> | 35 |
| 17. | <u>Changes in Subscriber Carrier Selection</u> | 37 |
| 18. | <u>Amendments or Waivers</u> | 38 |
| 19. | <u>Authority</u> | 38 |
| 20. | <u>Binding Effect</u> | 38 |
| 21. | <u>Consent</u> | 39 |
| 22. | <u>Expenses</u> | 39 |
| 23. | <u>Headings</u> | 39 |
| 24. | <u>Relationship of Parties</u> | 39 |
| 25. | <u>Conflict of Interest</u> | 39 |
| 26. | <u>Multiple Counterparts</u> | 39 |
| 27. | <u>Third Party Beneficiaries</u> | 39 |
| 28. | <u>Regulatory Approval</u> | 39 |
| 29. | <u>Trademarks and Trade Names</u> | 40 |
| 30. | <u>Regulatory Authority</u> | 40 |
| 31. | <u>Intentionally Left Blank</u> | 41 |
| 32. | <u>Verification Reviews</u> | 41 |
| 33. | <u>Complete Terms</u> | 42 |
| 34. | <u>Cooperation on Preventing End User Fraud</u> | 42 |
| 35. | <u>Notice of Network Changes/Notification of Other Information</u> | 43 |
| 36. | <u>Good Faith Performance</u> | 44 |
| 37. | <u>Responsibility of Each Party</u> | 44 |
| 38. | <u>Intentionally Left Blank</u> | 44 |
| 39. | <u>Governmental Compliance</u> | 44 |

| | | |
|-----|--|----|
| 40. | <u>Responsibility for Environmental Contamination</u> | 45 |
| 41. | <u>Subcontracting</u> | 46 |
| 42. | <u>Intentionally Left Blank</u> | 46 |
| 43. | <u>Severability</u> | 47 |
| 44. | <u>Survival of Obligations</u> | 47 |
| 45. | <u>Governing Law</u> | 47 |
| 46. | <u>Performance Criteria</u> | 47 |
| 47. | <u>Other Obligations of CLEC</u> | 47 |
| 48. | <u>Dialing Parity</u> | 47 |
| 49. | <u>Branding</u> | 48 |
| 50. | <u>Customer Inquiries</u> | 48 |
| 51. | <u>Disclaimer of Warranties</u> | 48 |
| 52. | <u>No Waiver</u> | 48 |
| 53. | <u>Definitions</u> | 48 |
| 54. | <u>Resale</u> | 48 |
| 55. | <u>Unbundled Network Elements</u> | 49 |
| 56. | <u>Ordering and Provisioning, Maintenance, Connectivity Billing and Reordering, and Provision of Customer Usage Data</u> | 49 |
| 57. | <u>Intentionally Left Blank</u> | 49 |
| 58. | <u>Compensation for Delivery of Traffic</u> | 49 |
| 59. | <u>Ancillary Functions</u> | 49 |
| 60. | <u>Other Requirement and Attachments</u> | 49 |
| 61. | <u>252 Adoptions</u> | 50 |

ATTACHMENTS

Resale

- Attachment 1: Resale
 - Appendix Services/Pricing
 - Appendix Customized Routing-Resale
- Attachment 2: Intentionally Left Blank
- Attachment 3: Intentionally Left Blank
- Attachment 4: Intentionally Left Blank
- Attachment 5: Intentionally Left Blank

Unbundled Network Elements

- Attachment 6: Unbundled Network Elements (UNE) (Amended 08/2007)
 - Appendix Wire Center Classification to Attachment 6 (Added 07/2006)
 - Appendix Alternate Billed Services
 - Intentionally Left Blank
- Attachment 7: Intentionally Left Blank
- Attachment 8: Intentionally Left Blank
- Attachment 9: Intentionally Left Blank
- Attachment 10: Intentionally Left Blank
 - Remand Order Embedded Base Temporary Rider

Network Interconnection Architecture and Compensation

- Attachment 11: NIA
 - Appendix ITR
 - Appendix NIM
- Attachment 12: Inter-carrier Compensation

Ancillary Functions

- Attachment 13: Ancillary Functions
 - Appendix Collocation (Amended 10/2006)
 - Appendix Poles, Conduit, ROW

Other Requirements

- Attachment 14: LRN-PNP
- Attachment 15: E911
- Attachment 16: Network Security and Law Enforcement

Other Requirements (cont.)

Attachment 17: Performance Remedy Plan

Appendix Performance Measurements – Business Rules

Attachment 18: Mutual Exchange of Directory Listing Information

Attachment 19: White Pages-Other (WP-O)

Attachment 20: Intentionally Left Blank

Attachment 21: Numbering

Attachment 22: DA-Facilities Based

Attachment 23: OS-Facilities Based

Attachment 24: Recording-Facilities Based

Attachment 25: DSL

Appendix Line sharing

Appendix Line Splitting

Attachment 26: Intentionally Left Blank

Attachment 27: OSS

Attachment 27A: Additional Operational Support

Attachment 28: Comprehensive Billing

Attachment 29: Intentionally Left blank

Attachment 30: Pricing Schedule (Amended 05/2006)

Amendment – GT&C, Name Change (Added 05/2006)

Amendment – TX Docket 31303 Wire Center Proceeding (Added 07/2006)

Amendment – Collocation Power (Added 10/2006)

Amendment – To Extend Term Date (Added 03/2007)

Amendment – Routine Network Modifications (Added 08/2007)

INTERCONNECTION AGREEMENT – TEXAS

This Interconnection Agreement (Agreement) is between the CLEC identified on the signature page of this Agreement, ("CLEC") and Southwestern Bell Telephone Company d/b/a AT&T Texas¹ ("AT&T TEXAS"), a Texas Limited Partnership, having its principal office at 175 E. Houston, San Antonio, Texas 78205 (collectively the Parties). This Agreement is the result of an arbitration in Docket No. 28821 between AT&T TEXAS and the CLEC Joint Petitioners.

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement) is dated as of _____, ____ by and between SBC TEXAS and CLEC only to the extent that AT&T TEXAS provides Telephone Exchange Services as an ILEC in Texas and shall apply only to the state of Texas.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of AT&T TEXAS services and for the provision by SBC TEXAS of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments and Schedules attached hereto.

WHEREAS, on February 8, 1996, the Communications Act of 1934, 47 U.S.C. § 151 et seq., was amended by the Telecommunications Act of 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, telecommunications carriers; and

WHEREAS, SBC TEXAS is an Incumbent Local Exchange Carrier or has a majority ownership interest in local exchange companies ("ILECs") which are Incumbent Local Exchange Carriers; and

WHEREAS, SBC TEXAS is willing to provide Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale and additional features, on the terms and subject to the conditions of this Agreement; and

WHEREAS, for purposes of this Agreement, CLEC operates or intends to operate in the State of Texas where SBC TEXAS is the ILEC and CLEC 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 local Telephone Exchange Services in said ILEC service areas by the Public Utilities Commission of Texas ("Commission");

WHEREAS, CLEC is a telecommunications carrier and has requested that SBC TEXAS negotiate an Agreement with CLEC for the provision of Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale, and additional features pursuant to the Act and in conformance with SBC TEXAS' duties under the Act; and

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. On June 29, 2007, Southwestern Bell Telephone, L.P., a Texas limited partnership, was merged with and into SWBT Inc., a Missouri corporation, with SWBT Inc. as the survivor entity. Simultaneous with the merger, SWBT Inc. changed its name to Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is doing business in Texas as "AT&T Texas". As explained in the added WHEREAS clauses below, this agreement is an MFN by Alpheus Data Services, L.L.C. into an Interconnection Agreement previously entered into by AT&T Texas' predecessor and another CLEC (the "Original Parties"). As such, except for the first paragraph of this agreement and the added WHEREAS clauses, this agreement shall refer to the Original Parties, but it shall be executed by Alpheus Data Services, L.L.C. and AT&T Texas.

WHEREAS, the Parties have arrived at this Agreement through procedures undertaken pursuant to the Act, and acknowledge that its terms and conditions are subject to the Act, including Sections 251 and 252 thereof.

WHEREAS, pursuant to Section 252(i) of the Act, for purposes of this Agreement, Alpheus Data Services, L.L.C. has adopted the Interconnection Agreement for the State of Texas ("the MFN Agreement") ("the Separate Agreement").

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement CLEC and SBC TEXAS hereby agree as follows:

1. INTRODUCTION

- 1.1# CLEC's current Interconnection Agreement sets forth the terms and conditions pursuant to which SBC TEXAS agrees to provide CLEC with access to unbundled network elements (UNEs), Collocation and Resale in SBC TEXAS' incumbent local exchange areas for the provision of CLEC's Telecommunications Services ((Act, Section 251(c)). The Parties acknowledge and agree that SBC TEXAS is only obligated to make available UNEs, Collocation and Resale to CLEC in SBC TEXAS' incumbent local exchange areas. SBC TEXAS has no obligation to provide UNEs, Collocation and Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC TEXAS' incumbent local exchange areas. In addition, SBC TEXAS is not obligated to provision UNEs, Collocation and Resale or provide any other rights under Section 251(c) of the Act outside of SBC TEXAS' incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in CLEC's current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the associated UNE, Collocation and Resale rates set forth in this Agreement), shall only apply and be available to CLEC for provisioning services within an SBC TEXAS incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement has been approved by the Commission and is in effect.
- 1.2 This Agreement also sets forth the terms and conditions for the interconnection of CLEC's network to SBC TEXAS' network and reciprocal compensation for the transport and termination of telecommunications. Provided however, all references to Resale in this Agreement, apply only where CLEC is purchasing resold services from SBC TEXAS pursuant to terms and conditions negotiated under Section 251(c)(4) of the Telecommunications Act of 1996 and incorporated into this Agreement.
- 1.3 Subject to the terms and conditions of this Agreement, the Unbundled Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Unbundled Network Elements, Combinations or Resale services provided by SBC TEXAS or to any network components provided by CLEC itself or by any other vendor. Subject to the requirements of this Agreement, CLEC may at any time add, delete, relocate or modify the Resale services, Unbundled Network Elements or Combinations purchased hereunder.
- 1.4 Except as provided in this Agreement, during the term of this Agreement, SBC TEXAS will not discontinue, as to CLEC, any Unbundled Network Element, Combination, or Ancillary Functions offered to CLEC hereunder. During the term of this Agreement, SBC TEXAS will not discontinue any Resale services or features offered to CLEC hereunder except as provided in this Agreement. This Section is not intended to impair SBC TEXAS' ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Unbundled Network Elements, Combinations or Ancillary Functions made by SBC TEXAS to CLEC as set forth in and during the term of this Agreement.
- 1.5 SBC TEXAS may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.6 This Agreement includes and incorporates herein the Attachments listed in the Table of Contents of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.7 Unless otherwise provided in the Agreement, or as required by 47 U.S.C. §224, SBC TEXAS will perform all of its obligations concerning its offering of Resale services and Unbundled Network Elements under this Agreement throughout the entire service area in Texas where SBC TEXAS is the incumbent local exchange carrier.

2. EFFECTIVE DATE, TERM AND TERMINATION

- 2.1 In AT&T-22STATE, with the exception of AT&T OHIO, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act. In AT&T OHIO, based on the PUC-OH, the Agreement is Effective upon filing and is deemed approved by operation of law on the 91st day after filing.
- 2.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and will remain in effect until August 29, 2013 and continue in full force and effect on a month to month basis, thereafter until (i) superseded in accordance with the requirements of this section or (ii) terminated pursuant to the requirements of this section. No earlier than one-hundred eighty (180) days before the expiration of the term, either Party may request that the Parties commence negotiations to replace this Agreement with a superseding agreement by providing the other Party with a written request to enter into negotiations. If 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 the survivability causes contained herein.
- 2.2.1 If either Party serves Notice of Expiration pursuant to Section 2.2, CLEC shall have twenty (20) calendar days to provide SBC TEXAS written confirmation if CLEC wishes to pursue a successor agreement with SBC TEXAS or alternatively, if CLEC wishes to allow the current Agreement to expire. If CLEC wishes to pursue a successor agreement with SBC TEXAS, CLEC shall attach to its written confirmation or Notice of Expiration, as applicable, a written request to commence negotiations with SBC TEXAS under Sections 251/252 of the Act. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 2.2.1.1 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with SBC TEXAS in its, as applicable, Notice of Expiration or the written confirmation required after receipt of SBC TEXAS' Notice of Expiration, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received Notice of Expiration. Unless otherwise agreed by the Parties, if the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received Notice of Expiration, the Parties shall have no further obligations under this Agreement except those described in Section 44 of this Agreement, including but not limited to the obligations described in Section 2.4 below.
- 2.2.2 Notwithstanding anything to the contrary in this Section 2, pursuant to Merger Commitment No. 4 under "Reducing Transaction Costs Associated with Interconnection Agreements," ordered by the FCC effective December 29, 2006 in connection with its approval of the merger of AT&T Inc. and BellSouth Corp. ("ICA Merger Commitment No. 4"), the original expiration date of this Agreement, as modified by this Amendment, will be extended for a period of three (3) years from August 29, 2010 until August 29, 2013 (the "Extended Expiration Date"). The Agreement shall expire on the Extended Expiration Date; provided, however, that during the period from the effective date of this Amendment until the Extended Expiration Date, the Agreement may be terminated earlier either by written notice from Logix, by AT&T Texas pursuant to the Agreement's early termination provisions, by mutual agreement of the parties, or upon the effective date of a written and signed superseding agreement between the parties.

- 2.3 The terms and conditions and rates and charges contained herein will continue to apply until the earlier of (i) termination by either Party under the terms of this Agreement; (ii) the date a successor agreement becomes effective or (iii) the date that is ten (10) months after the date on which SBC TEXAS received CLEC's Section 252(a)(1) request, unless an arbitration petition has been filed by either Party, in which case (ii) applies.
- 2.4 CLEC may terminate this Agreement in whole or in part at any time for any reason upon sixty (60) days prior notice but its liabilities and obligations shall continue in accordance with Section 44 below.
- 2.5 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Unbundled 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, other than as set forth in Section 10, 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 2.5 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.
- 2.6 As long as a non-paying Party has disputed unpaid amounts in good faith and pursuant to the terms of this Agreement, non-payment is not to be deemed, nor should it be construed as, a material breach of this Agreement.
- 2.7 In the event of expiration or termination of this Agreement other than pursuant to Section 2.5, SBC TEXAS and CLEC shall cooperate in good faith to effect an orderly and timely transition of service under this Agreement to CLEC or to another vendor. So long as CLEC fulfills said obligation to effect an orderly and timely transition of service, SBC TEXAS shall not terminate service to CLEC's end users and such service shall be provided pursuant to the terms of the interconnection agreement during this transition period. SBC TEXAS and CLEC shall continue their responsibilities under the terms and conditions of the terminated or expired Agreement for any order submitted to SBC TEXAS in connection with this transition of service.

3. CHANGE IN LAW/RESERVATION OF RIGHTS

- 3.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the Parties before the Commission. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the following, as of January 23, 2004, which is the date this Agreement is filed for arbitration with the Commission: the Act, the applicable rules, regulations and Orders promulgated under the Act by the FCC, and applicable Texas statutes, rules, regulations and Commission orders, and judicial decisions by courts of competent jurisdiction interpreting and applying said federal and Texas statutes, rules, regulations and Orders. 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) that are issued, rendered, or adopted after January 23, 2004. Additionally, each Party expressly reserves its intervening law rights relating to the following actions: the impairment proceedings that will be heard before the Commission and any pending appeals that relate to, or arise from, the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of

the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) (the "TRO") and the D.C. Circuit's decision in United States Telecom Association, et. al v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA") For purposes of this Agreement, "Change in Law" shall be defined as any legally binding judicial decision by a court of competent jurisdiction, amendment of the Act or applicable Texas statute, or legislative, federal or state regulatory action, rule, regulation or other legal action that materially revises, reverses, modifies or clarifies the meaning of the Act, an applicable Texas statute or any of said rules, regulations, Orders, or judicial decisions which otherwise materially affect any of the material provisions set forth in this Agreement that is issued, rendered or adopted after January 23, 2004. For purposes of this section, "legally binding" means that the relevant legal action has not been stayed, no request for a stay is pending and if any deadline for requesting a stay is designated by statute or regulation, such deadline has passed. If either Party believes that a Change in Law within the meaning of this section has occurred, that Party may request renegotiation by written notice to the other Party. The Parties shall thereafter renegotiate the affected provisions in this Agreement in good faith and amend this Agreement to reflect such Change in Law. For avoidance of any doubt, this section shall also apply to situations where this Agreement defines the rights or obligations of either Party solely by reference to Applicable Law or similar reference. In the event that any renegotiation under this Section 3.0 is not concluded within ninety (90) days after one Party gives the other notice that it demands renegotiation pursuant to this provision, or if at any time during such ninety (90) day period the Parties shall have ceased to negotiate such terms for a continuous period of fifteen (15) business days or if the non-requesting Party refuses to engage in such renegotiation on the ground that there has been no Change in Law sufficient to require renegotiation under this Section, the dispute shall be resolved as provided in Section 9 of this Agreement.

- 3.2 The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights to participate in any proceedings regarding the proper interpretation and/or application of the Act, applicable rules and regulations nor does it waive any rights, remedies, or arguments with respect to any provisions of this Agreement or any rules, regulations, Orders or laws upon which it is based, including its right to seek legal review or a stay pending appeal.

4. INTENTIONALLY LEFT BLANK

5. ASSIGNMENT

- 5.1 CLEC may assign or transfer this Agreement to its Affiliate(s) or a Third Party by providing SBC TEXAS written notice thirty (30) calendar days' prior to such assignment or transfer; provided such assignment is not inconsistent with Applicable Law. As such, neither party may delay a transfer for any reason other than to make the determination of the affiliate's or Third Party's ability to pay for the services provided. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate(s) or any Third Party if that Affiliate(s) or Third Party is a party to a separate agreement with SBC TEXAS under Sections 251 and 252 of the Act. However the Affiliate or Third Party may opt into any effective and approved Agreement pursuant to Section 252(i) of the Act. Any attempted assignment or transfer of this Agreement by CLEC that is not expressly permitted or allowed shall be void.
- 5.2 Each Party will notify the other in writing not less than thirty (30) days in advance of anticipated assignment.

6. CONFIDENTIALITY AND PROPRIETARY INFORMATION

- 6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party (the "Discloser") to the other Party (the "Recipient") and identified by the Discloser as Confidential Information in accordance with this Section 6. Additionally, such Confidential Information shall include 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, 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").
- 6.2 All information which is to be treated as Confidential Information under this Agreement shall:
- (a) if in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and
 - (b) if oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and which is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.
- 6.2.2 Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information.
- 6.3 In addition, by way of example and not limitation, information regarding orders for Resale Services, Network Elements or Combinations placed by CLEC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of CLEC's customers pursuant to the Act and the rules and regulations of the FCC, and Recorded Usage Data as described in Attachment 28 concerning Recorded Usage Data, whether disclosed by CLEC to SBC TEXAS or otherwise acquired by SBC TEXAS in the course of the performance of this Agreement, will be deemed Confidential Information of CLEC for all purposes under this Agreement.
- 6.4 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.
- 6.5 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.6 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request

is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.

- 6.7 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 6.8 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.9 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 6.10 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.11 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

7. LIABILITY, INDEMNIFICATION, INTELLECTUAL PROPERTY AND INSURANCE

7.1 Limitation of Liabilities

- 7.1.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices or attachments, 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 inadvertent 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 TEXAS or CLEC 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. "Loss" is defined as any and all losses, costs (including court

costs), claims, damages (including fines, penalties and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

- 7.1.2 Except as otherwise provided below or in specific Attachments or Schedules or other attachments to this Agreement, in the case of any loss alleged or claimed by a third party arising under the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this section shall be limited to, that portion 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.
- 7.1.3 SBC TEXAS shall not be liable to CLEC for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after SBC TEXAS has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from CLEC until service is restored.
- 7.1.4 In the event CLEC provides E911 Service to SBC TEXAS, CLEC shall not be liable to SBC TEXAS, its end Users or its E911 calling parties or any other parties or persons for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after CLEC has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from SBC TEXAS until service is restored.

7.2 No Consequential Damages

- 7.2.1# NEITHER CLEC NOR SBC TEXAS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SBC TEXAS' OR CLEC'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SBC TEXAS OR CLEC'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

THE LIMITATIONS OF LIABILITY OUTLINED ABOVE DO NOT PRECLUDE PARTIES FROM SEEKING DAMAGES IN ANY COURT OF COMPETENT JURISDICTION.

7.3 Obligation to Indemnify

7.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnitee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors.

7.3.1.1 In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional or willful misconduct or breach of applicable law of the other (Indemnified) Party.

7.3.2 Intellectual Property

7.3.2.1 CLEC acknowledges that its right under this Agreement to interconnect with SBC TEXAS network and to unbundle and/or combine SBC TEXAS network elements (including combining with CLEC's network elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.

7.3.3 The Parties will abide by the April 27, 2000 FCC order in CC Docket No. 96-98 (File No. CCBPol. 97-4), *In the Matter of Petition of MCI for Declaratory Ruling*.

7.3.3.1 SBC TEXAS agrees to use its best efforts to obtain co-extensive rights for CLEC, under commercially reasonable terms, for Intellectual Property rights to each unbundled network element necessary for CLEC to use such unbundled network element in the same manner as SBC TEXAS.

7.3.3.2 SBC TEXAS shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any unbundled network element in a different manner than used by SBC TEXAS.

7.3.3.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SBC TEXAS shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SBC TEXAS under the vendor contract and the terms of the contract (excluding cost terms). SBC TEXAS shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.

- 7.3.4 Except as may be required by state or federal law, nothing in this Agreement shall be construed as licenses to use such Intellectual Property rights or warranties, express or implied, concerning CLEC's (or any third party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such interconnection or unbundling and/or combining of network elements (including combining with CLEC's network elements) in SBC TEXAS' network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC TEXAS agrees in Section 7.3.3.1 to use its best efforts to obtain.
- 7.3.5 Unless otherwise required by Applicable Law, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim that arises out of, is caused by, or relates to CLEC's interconnection with SBC TEXAS' network and unbundling and/or combining SBC TEXAS' network elements (including combining with CLEC's network elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with unbundled network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SBC TEXAS agrees in Section 7.3.3.1 to use its best efforts to obtain.
- 7.3.6 CLEC acknowledges that services and facilities to be provided by SBC TEXAS hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit SBC TEXAS to provide to CLEC, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to CLEC under this Agreement, then, as may be required by applicable state or federal law:
- a) SBC TEXAS agrees to provide written notification to CLEC, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions; and
 - b) For any new agreements that SBC TEXAS enters into or existing agreements that it renews, SBC TEXAS shall use its best efforts to procure rights or licenses to allow SBC TEXAS to provide to CLEC the particular unbundled Network Element(s), on terms comparable to terms provided to SBC TEXAS, directly or on behalf of CLEC ("Additional Rights/Licenses").
 - c) For any new agreements that SBC TEXAS enters into or existing agreements that it renews, in the event that SBC TEXAS, after using its best efforts, is unable to procure Additional Rights/Licenses for CLEC, SBC TEXAS will promptly provide written notification CLEC of the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or

equipment; the extent to which it asserts CLEC's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.

- d) In the event CLEC provides in writing within thirty (30) calendar days of written notice in section (c) above that SBC TEXAS has not exercised such best efforts, CLEC may seek a determination through an expedited petition to the Public Utility Commission of Texas as to whether SBC TEXAS has exercised such best efforts.
- e) If and to the extent SBC TEXAS is unable to make all warranties required pursuant to this agreement without additional costs, including payment of additional fees, in renegotiating with its vendors or licensors, SBC TEXAS may seek recovery of such costs as are reasonable. Such additional costs shall be shared among all requesting carriers, including SBC TEXAS, provided, however, all costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 7.3.3.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including SBC TEXAS.

7.3.7 Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims of third parties that may arise in the performance of this Agreement.

7.3.8 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party. Notwithstanding the exclusive ownership of Intellectual Property originated by a Party, the Party that owns such Intellectual Property will not assess a separate fee or charge to the other Party for the use of such Intellectual Property to the extent used in the provision of a product or service, available to either party under this Agreement, that utilizes such Intellectual Property to function properly.

7.4 Obligation to Defend; Notice; Cooperation

7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will 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. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee 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 Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. 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.

7.5 OSHA Statement

- 7.5.1 CLEC, in recognition of SBC TEXAS' status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SBC TEXAS with all federal, state and local laws, safety and health regulations relating to CLEC's activities concerning Collocated Space, and to indemnify and hold SBC TEXAS harmless for any judgments, citations, fines, or other penalties which are assessed against SBC TEXAS as the result solely of CLEC's failure to comply with any of the foregoing. SBC TEXAS, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold CLEC harmless for any judgments, citations, fines or other penalties which are assessed against CLEC as a result solely of SBC TEXAS' failure to comply with any of the foregoing.

7.6 Compliance and Certification

- 7.6.1 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.
- 7.6.2 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. § 2522, and 47 U.S.C. §§ 229, 1001-1010) ("CALEA"). The Parties agree to work jointly, cooperatively and in good faith to allow each Party to comply with CALEA. Unless otherwise specified, each Party shall bear its own cost of complying with CALEA.
- 7.6.3 OSS
- 7.6.3.1 CLEC shall be responsible for and indemnifies SBC TEXAS against any cost, expense or liability relating to any unauthorized entry or access into, or improper use or manipulation of SBC TEXAS' OSS by CLEC employees or persons using authorization granted to that person by CLEC to access SBC TEXAS' OSS and shall pay SBC TEXAS for any and all damages caused by such unauthorized entry, improper use or manipulation of SBC TEXAS' OSS.

7.7 Minimum Insurance Requirements:

- 7.7.1 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 7.7.2 For CLECs that are reselling SBC Texas Resale Services and/or purchasing UNE-P under this Agreement, the minimum insurance coverage and limits are as follows:

- 7.7.2.1 Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations.
- 7.7.3 For CLECs that are Interconnecting or purchasing any Unbundled Network Elements (other than UNE-P), products or services under this Agreement, the minimum insurance coverage and limits are as follows:
 - 7.7.3.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.
 - 7.7.3.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property Damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
 - 7.7.3.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 7.7.4 Subcontractor Coverage:
 - 7.7.4.1 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 7.7.1 through 7.7.3.2, as applicable, of this Agreement.
- 7.7.5 Companies Affording Insurance:
 - 7.7.5.1 The Parties agree that companies affording the insurance coverage required under Section 7.7 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
 - 7.7.5.2 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 7.7.6 Self Insurance:
 - 7.7.6.1 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

7.7.6.2 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employee's state of hire; and

7.7.6.3 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

7.7.6.4 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

7.7.7 This Section 7.7 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.

8.0# PAYMENT OF RATES AND CHARGES, DEPOSITS

#8.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within forty-five (45) days from the date of the invoice. For purposes of this Agreement, the "Bill Due Date" shall be defined to mean forty-five (45) calendar days from the date of the invoice. If CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to SBC-Texas as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge will be assessed as provided in Sections 8.2. and 8.3., as applicable.

8.1.1 If the payment due date is a Sunday or is a Monday that has been designated a bank holiday by the JP Morgan Chase Bank (or such other bank as the Parties agree), payment will be made the next business day. If the payment due date is a Saturday or is on a Tuesday, Wednesday, Thursday or Friday that has been designated a bank holiday by the JP Morgan Chase Bank (or such other bank as the Parties agree), payment will be made on the preceding business day.

8.2 If either Party fails to remit payment for any charges for services by the applicable due date, or if a payment or any portion of a payment is received by the billing Party from the paying Party after the applicable due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the billing Party as of the due date (individually and collectively, "Past Due"), then a late payment charge/interest* shall be assessed as follows in Sections 8.2.1 and 8.2.2, as applicable. No other late payment fee or charge applies to overdue amounts.

*For purposes of billing under this Agreement, the terms "interest" and "late payment charge" shall have the same meaning, as set forth in 8.2.1 and 8.2.2 below; provided, however, that neither party

Conformed to Docket 28821

will assess a flat fee penalty charge. The parties shall only charge interest as set forth in Sections 8.2.1 and 8.2.2.

8.2.1 If any charge incurred under this Agreement that is billed out of a billing system other than the SBC TEXAS 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 TEXAS intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law.

8.2.2 If any charge incurred under this Agreement that is billed out of SBC TEXAS' 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 TEXAS 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 TEXAS intrastate retail tariff governing Late Payment Charges to SBC TEXAS' retail End Users that are business End Users in that state and (ii) the highest rate of interest that may be charged under Applicable Law.

8.3 Each Party shall make all Payments in U.S. Dollars to the other party via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by Party receiving the payment. At least thirty (30) days prior to the first transmission of billing data and information for payment, SBC TEXAS will provide the name and address of its bank, its account and routing number and to whom billing payments should be made payable. If such banking information changes, each Party will provide the other Party at least sixty (60) days written notice of the change and such notice will include the new banking information. CLEC and SBC TEXAS shall abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer shall be received by the billing Party no later than the applicable due date of each bill or late payment charge/interest will apply as provided in Section 8.2.1 above. The Party receiving payment shall not be liable for any delays in receipt of funds or errors in entries caused by the paying Party or third parties, including the paying Party's financial institution. The paying Party is responsible for its own banking fees. Each Party will provide the other Party with a contact person for the handling of billing payment questions or problems.

8.3.1 SBC TEXAS and CLEC shall provide each other with remittance advices, providing detailed account information for proper application of the payment made by the paying Party. The remittance advice shall be transmitted electronically by 1:00 A.M. Eastern Time on the date the payment is effective, via an 820 EDI process, or, if the Parties agree, through the ACH network. Such process shall be utilized by the Parties beginning no later than three (3) months after the Effective Date of this Agreement, unless otherwise agreed between the Parties.

8.3.2 In the event CLEC receives multiple and/or other bills from SBC TEXAS which are payable on the same date, CLEC may remit one payment for the sum of all such bills payable to SBC TEXAS' bank account designated pursuant to Section 8.3 and CLEC will provide SBC TEXAS with a payment advice pursuant to Section 8.3.1.

8.4 Billing Disputes Related to Paid Amounts

8.4.1 In order for a Billed Party to dispute all or a portion of amounts it has paid, it must:

8.4.1.1# within eleven months of the Billed Party's receipt of the bill in question, give written notice to the Billing Party, by using the standard document, if any, made

available by the Billing Party, unless otherwise agreed, of the amounts it disputes ("Disputed Amounts") and include in such written notice the total amount disputed and the specific details and reasons for disputing each item (including, without limitation, and as applicable, the date of the bill in question, BAN/invoice number of the bill, the telephone number, customer code, circuit ID number or trunk number and the USOC information questioned). If the Billed Party determines that additional information should be submitted to the Billing Party to aid in the resolution of the bill dispute, then the Billed Party may submit the additional information in written form in conjunction with the completed SBC Texas standard bill dispute document.

8.4.1.2 follow the dispute resolution procedures set forth in Section 9, below.

8.4.2 If a Billed Party brings a dispute pursuant to this Section 8.4, and any portion of the dispute is resolved, at the conclusion of the applicable dispute resolution process pursuant to Section 9, in favor of the Billed Party, the Billing Party shall pay or credit the account of the Billed Party the amount determined through the dispute resolution process, plus interest computed in the manner specified under the dispute resolution process (or under Section 8.2, whichever is applicable), as follows:

- (a) the Billing Party shall determine if the Billed Party has any undisputed amount Past Due (as defined under Section 8.2 of this Attachment) and owing to the Billing Party;
- (b) at the Billing Party's discretion, the amount determined through the dispute resolution process, plus interest computed in the manner specified under the dispute resolution process (or under Section 8.2, whichever is applicable), will be applied as a credit against the amount determined under subparagraph (a) preceding;
- (c) the amount so credited shall be reflected in the immediately next issued invoice with a breakout of the dispute resolution credit and accrued interest listed separately or other supplemental report with appropriate detail; and
- (d) to the extent the amount of dispute resolution exceeds the amount credited by the Billing Party in (a) then the Billing Party will issue a check to the Billed Party of that difference at the same time that the credit is issued pursuant to subparagraph (b).

8.4.2.1 The Parties also agree that the foregoing credit process will not apply to any significant settlements that the Parties enter into that expressly specify a reconciliation process, in which event the terms of such settlement agreement will govern the payment of the settlement amounts.

8.5 Billing Disputes Related to Unpaid Disputed Amounts; Escrow Requirements

8.5.1# 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 "Billed Party") shall, on or before the applicable due date, advise the Billing Party in writing by using the standard document, if any, made available by the Billing Party, unless otherwise agreed, of the amounts it disputes ("Disputed Amounts") and within ten (10) business days after the applicable due date give the Billing Party written notice of the amount disputed, specific details and reasons for disputing each item (including, without limitation, as applicable, the date of the bill in question BAN/invoice number of the bill, the telephone number, customer code, circuit ID number or trunk number, the USOC information questioned), unless the Parties agree a lesser level of detail is necessary), and pay to the

Billing Party all undisputed unpaid charges by their applicable due date. All disputes must be in good faith and have a reasonable basis. If the Billed Party determines that additional information should be submitted to the Billing Party to aid in the resolution of the bill dispute, then the Billed Party may submit the additional information in written form in conjunction with the completed SBC Texas standard bill dispute document.

8.5.2# Intentionally left blank.

8.5.3 The Billed Party shall pay (i) when due, all undisputed amounts to the Billing Party, and (ii) within thirty (30) days after its written notice of dispute, except as otherwise provided in Section 8.7 below, place 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:

8.5.3.1 The financial institution proposed as the third party escrow agent must be located within the continental United States;

8.5.3.2 The financial institution proposed as the third party escrow agent may not be an affiliate of either Party; and

8.5.3.3 The financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) credit transactions transfers.

8.5.3.4 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 that the escrow account will meet all of the following criteria:

8.5.3.4.1 The escrow account must be an interest bearing account;

8.5.3.4.2 All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;

8.5.3.4.3 That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the third party escrow agent;

8.5.3.4.4 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and

8.5.3.5 Disbursements from the escrow account shall be limited to those:

8.5.3.5.1 authorized in writing by both the disputing 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

8.5.3.5.2 made in accordance with the final, non-appealable order or award of an arbitrator appointed pursuant to the provisions of Sections 9.5.1 or 9.6.1; or

8.5.3.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter an arbitrator's award pursuant to Section 9.6.1.

8.5.4 Disputed Amounts in escrow shall be subject to late payment charges/interest as set forth in Sections 8.2.1 and 8.2.2, as applicable.

8.5.5[#] Limitation on Backbilling and Credit Claims

8.5.5.1 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 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.

8.5.5.2 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 and is addressed separately in the Reciprocal Compensation Attachment.

8.6 Intentionally Left Blank.

8.7 The Billed Party shall not be required to place Disputed Amounts in escrow, as required by Section 8.5, above, if: (i) the Billed 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 date it notifies the Billing Party of its billing dispute); or (ii) the Billed 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, (iii) if the bill containing the disputed charges is not the first bill for a particular service to the Billed Party, the Billed Party's dispute does not involve 50% or more of the total amount of the previous bill out of the same billing system.

8.8 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 9.

8.9 If the Billed Party disputes in accordance with Section 8.5, any charges and any portion of the dispute is resolved in favor of such Billed Party, the Parties shall cooperate to ensure that all of the following actions are taken:

8.9.1 no later than the second bill date after the resolution of the dispute, the Billing Party shall credit the invoice of the Billed Party for that portion of the Disputed Amounts resolved in favor of the Billed Party, including a credit for any late payment charge/interest assessed or applied with respect to such portion of the Disputed Amounts;

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- 8.9.2 within fifteen (15) calendar days after resolution of the dispute, the portion of the escrowed Disputed Amounts, if any, resolved in favor of the Billed Party shall be released to the Billed Party, together with any accrued interest thereon, and any portion of the Disputed Amounts not in escrow and resolved in favor of the Billed Party shall be paid to Billed Party, together with any late payment charge/interest assessed or applied with respect thereto; and
- 8.9.3 within fifteen (15) calendar days after resolution of the dispute, any portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon (and if the accrued interest does not equal any late payment charge/interest that would have been assessed pursuant to Section 8.2.1 had the Disputed Amounts remained undisputed and unpaid during the period of the Dispute, the Billed Party shall remit payment of the difference to the Billing Party within this same time period) and, as applicable, any portion of the Disputed Amounts not in escrow and resolved in favor of the Billing Party shall be paid to Billing Party, together with any late payment charge/interest assessed or applied with respect thereto.
- 8.10 Failure by the Billed Party to knowingly take all necessary actions to effect a release of escrowed Disputed Amounts determined at the conclusion of the applicable dispute resolution process to be owed to the Billing Party or to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.9 shall be grounds for termination of this Agreement as specified in Section 10.2, following.
- 8.11 Deposits
- 8.11.1 The deposit requirements set forth in this Section 8 apply to SBC TEXAS' providing the Resale Services and Network Elements and collocation (exclusive of interconnection facilities, collocation cage construction and reciprocal compensation) furnished under this Agreement. SBC TEXAS may, in order to safeguard its interests, require that CLEC, if it has a proven history of late payments or has not established a minimum of twelve consecutive months good credit history with the SBC-owned ILEC in each state where the Parties are doing business, make a reasonable deposit to be held by SBC TEXAS as a guarantee of the payment of charges. For purposes of this provision, a Party shall not be deemed to have "a proven history of late payments" or "not established credit" based in whole or in part on the failure to pay amounts which such Party has properly disputed in good faith in accordance with all applicable provisions of Sections 8.5 through 8.10.
- 8.11.2 Intentionally Left Blank.
- 8.11.3 Unless CLEC is not required to make a deposit payment as described in Section 8.11.1 above, CLEC shall remit an initial cash deposit within thirty (30) days after written request by SBC TEXAS. The deposit required by the previous sentence, if any, shall be determined as follows: (i) if, immediately prior to the Effective Date, CLEC was not operating as a local service provider in Texas, the initial deposit shall be in the amount of \$17,000; or (ii) if, immediately prior to the Effective Date, CLEC was operating as a local service provider in Texas, the deposit shall be in the amount calculated using the method set forth in Section 8.11.7 of this Agreement. This cash deposit will be held by SBC TEXAS as a guarantee of payment of charges billed to CLEC. If CLEC is not required to make a deposit payment as set forth in Section 8.11.1 above, SBC TEXAS shall not require an initial deposit requirement; provided, however, that the terms and conditions set forth in Section 8.11.1 and Sections 8.11.4 through Section 8.11.10 of this Agreement shall continue to apply for the term of this Agreement and any extension(s) hereof. In

determining whether CLEC has established the minimum twelve (12) months good credit history, CLEC's payment record for the most recent twelve (12) months immediately prior to the Effective Date shall be considered.

- 8.11.4 So long as CLEC maintains timely compliance with its payment obligations, SBC TEXAS will not increase any deposit amount required. If CLEC fails to maintain timely compliance with its payment obligations, SBC TEXAS reserves the right to require additional deposit(s) determined in accordance with Section 8.11.5 and Section 8.11.6 through Section 8.11.10 of this Agreement.
- 8.11.5[#] If during the first six (6) months of operations under this Agreement, CLEC (a) has been sent at least one valid delinquency notification letter (a letter notifying CLEC of charges that remain unpaid more than fifteen (15) days past their due date (45 days from the date of the invoice, pursuant to Section 8.1, above)) by SBC TEXAS, where at least a portion of the charges addressed by the delinquency notification letter are not the subject of a dispute under Section 8.5; and (b) the amounts covered by such delinquency notices equals or exceeds five percent (5%) of the aggregate amount billed by SBC TEXAS to CLEC under this Agreement of the state in which CLEC is delinquent for the months in question, the deposit amount for the service(s) subject to such delinquency notification letter shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing average for a three month period exceeds the deposit amount held. For purpose of this section, multiple delinquency letters for individual services (i.e. resale, UNE, etc) relating to the same Billing Account Number (BAN) for overlapping time periods will be deemed to be one delinquency letter.
- 8.11.6 Throughout the term of this Agreement and any extension(s) thereof, any time CLEC (a) has been sent at least two (2) valid delinquency notification letters (letters notifying CLEC of charges that remain unpaid more than fifteen (15) days past their due date) by SBC TEXAS within the immediately preceding twelve (12) months, where at least a portion of the charges addressed by each delinquency notification letter are not the subject of a dispute under Section 8.5; and (b) the amounts covered by such delinquency notices equals or exceeds five percent (5%) of the aggregate amount billed by SBC TEXAS to CLEC under this Agreement of the state in which CLEC is delinquent for the months in question, the deposit amount for the service subject to such delinquency notification letters shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing average for a three month period exceeds the deposit amount held.
- 8.11.7 Whenever CLEC's deposit is re-evaluated as specified in Section 8.11.5 or Section 8.11.6, above, such deposit shall be calculated in an amount equal to the average billing to CLEC for Resale service and/or unbundled elements, as applicable, for a two month period. With respect to CLEC, the most recent three (3) months billing on all of CLEC's BANs/Invoice numbers, as applicable, for resale services or network elements shall be used to calculate CLEC's monthly average, which monthly average shall be multiplied by two (2) to arrive at the amount of deposit permitted by Sections 8.11.5 and 8.11.6.
- 8.11.8 Whenever a deposit is re-evaluated as specified in Section 8.11.5 and Section 8.11.6, above, CLEC shall remit the additional deposit amount to SBC TEXAS within thirty (30) calendar days of receipt of written notification SBC TEXAS requiring such deposit.

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- 8.11.9 The deposit requirements of this Section 8.11 may be satisfied in whole or in part with an irrevocable bank letter of credit reasonably acceptable to SBC TEXAS. No interest shall be paid by SBC TEXAS for any portion of the deposit requirement satisfied by an irrevocable bank letter of credit.
- 8.11.10 The fact that SBC TEXAS holds a cash deposit or irrevocable bank letter of credit does not relieve CLEC from timely compliance with its payment obligations under this Agreement.
- 8.11.11 Any cash deposit held by SBC TEXAS shall be credited to CLEC's account during the month following the expiration of twelve (12) months after the cash deposit was remitted, so long as CLEC has not been sent more than one delinquency notification letter (as defined in Section 8.11.5) during the most recent twelve (12) months, in which case such cash deposit will be credited during the first rolling twelve (12) month period in which CLEC has been sent less than two delinquency notifications. For the purposes of this Section 8.11.11, interest will be applied from the date paid and calculated as defined in Section 8.2.1 above, and shall be credited to CLEC's account on an annual basis.
- 8.11.12 Any cash deposit shall be held by SBC TEXAS as a guarantee of payment of charges billed to CLEC, provided, however, SBC TEXAS may exercise its right to credit any cash deposit to CLEC's account upon the occurrence of any one of the following events:
- 8.11.12.1 when SBC TEXAS sends CLEC the second valid delinquency notification under this Agreement during the most recent twelve (12) months (provided that a delinquency notification shall be deemed valid if no dispute has been filed under Section 8.5 as to any amount covered by the delinquency notice); or
 - 8.11.12.2 when SBC TEXAS suspends CLEC's ability to process orders in accordance with Section 10.2.2; or
 - 8.11.12.3 when CLEC files for protection under the bankruptcy laws; or
 - 8.11.12.4 when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) days; or
 - 8.11.12.5 when this Agreement expires or terminates (provided, upon expiration or termination of this Agreement, any deposit monies not applied under this Agreement against charges payable by CLEC shall be refunded to CLEC by SBC TEXAS);
 - 8.11.12.6 during the month following the expiration of twelve (12) months after that cash deposit was remitted, SBC TEXAS shall credit any cash deposit to CLEC's account so long as SBC TEXAS has not sent to CLEC more than one delinquency notification letter under this Agreement during the most recent twelve (12) months; or
 - 8.11.12.7 upon mutual agreement of the Parties.
- 8.11.13 For the purposes of this Section 8.11.13, interest will be calculated as specified in Section 8.2 and shall be credited to CLEC's account at the time that the cash deposit is credited to CLEC's account.

- 8.12 Assuming that the previous payment and credit history of a Party (a "Requesting Party") justifies doing so, upon request the other Party (the "Acknowledging Party") will issue a written acknowledgement that the Requesting Party satisfies the condition that the Requesting Party does not have a proven history of late payments and that it has established a minimum of twelve consecutive months good credit history with the Acknowledging Party. Such an acknowledgement, whenever given, shall not be barred by Section 33, below, and shall be enforceable pursuant to its own terms. Such an acknowledgement shall not be required in order for a Party to meet the conditions necessary to avoid imposition of a deposit requirement under this Agreement, assuming it otherwise meets the conditions.
- 8.13 Intentionally left blank.
- 8.14[#] Each of the Parties will provide all bills and invoices to the other Party electronically when technically feasible rather than in paper form. Upon request, the Parties will provide to the other Party paper copies of bills or invoices for specific types of service (i.e., Resale, UNE, etc.).
- 8.15# Intentionally left blank.
- 8.16# Intentionally left blank.
- 8.17# In response to a trouble ticket initiated by CLEC where SBC determines in error that the trouble is in CLEC's network or CLEC end user's equipment or communications systems, and CLEC subsequently finds the trouble resides in SBC's network, CLEC will be credited for all SBC trouble isolation costs the original trouble ticket, and if deemed necessary, subsequent trouble tickets warranted to the same case of trouble. In addition, CLEC may charge SBC after closing of the trouble ticket, a charge for trouble isolation, at a rate not to exceed the tarified amount that SBC could charge CLEC under SBC's tariff for the same service, provided that CLEC's time for trouble isolation must be reasonable in relation to the work actually performed, and further provided that SBC may pay such charges to CLEC by means of an identifiable credit on CLEC's account. If either Party disagrees with the applicable charge assessed, the determination of the appropriate charge will be subject to the dispute resolution provisions of this Agreement.

9. DISPUTE RESOLUTION

9.1 Finality of Disputes

- 9.1.1 Except as otherwise specifically provided in this Agreement (for example, in Section 8.5.1, above), no claims will be brought for disputes arising from this Agreement more than 12 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Likewise, no back bill will be issued for charges arising from this Agreement more than 12 months from the date of the service, occurrence or event giving rise to the charge or back bill.
- 9.1.2 During the pendency of resolution of any dispute raised in accordance with this Section 9 of this Agreement, whether by settlement or by arbitration award, ruling, order or judgment, each Party shall continue to perform all of its obligations under this Agreement, and shall not, based upon an act or omission that is the subject of the dispute that is pending resolution, discontinue or cease to provide all or any portion of obligations pursuant to this Agreement, unless otherwise directed by the other Party.

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9.2 Alternative to Litigation

9.2.1 Dispute resolution under the procedures provided in this Section 9 shall be the preferred, but not the exclusive, remedy for all disputes between SBC TEXAS and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure. However, except for an action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, no action or complaint may be filed in the Commission or a court, agency or regulatory authority of competent jurisdiction before the Informal Resolution of Disputes procedures set forth in Section 9.3 below have been followed, in good faith, by the Party commencing such action or complaint.

9.3 Informal Resolution of Disputes

9.3.1 Upon receipt by one Party of written notice of a dispute, including billing disputes, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative informal dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

9.3.2 If the Parties are unable to resolve a dispute through the informal procedures described above, then either Party may invoke the Formal Resolution of Disputes or the Parties may agree to invoke Arbitration processes set forth below. Unless the Parties otherwise agree, Formal Resolution of Disputes processes, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) days after the date of the letter initiating informal dispute resolution under this Section 9.3.

9.3.3 Either Party may notify the other Party in writing at any time after the 60th day after the date of the letter initiating informal dispute resolution under this Section 9.3 that it considers the matter to be at impasse. Such notice shall be provided by any acceptable means under Section 11, below, other than via facsimile. If the other Party does not pursue additional dispute resolution measures pursuant to this Section 9 within 10 business days of the date of the notice letter, the notifying Party may exercise its rights to disconnection and termination in accordance with the processes set forth in Section 10.

9.4 If a bill closure process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of this Section.

9.5 Formal Resolution of Disputes

9.5.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to billing disputes and matters not

specifically addressed elsewhere in this Agreement which require clarification, renegotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the applicable commission. Also, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 9.6.

9.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

9.5.3 Claims Not Subject to Commercial Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to commercial arbitration as provided in Section 9.6 below and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

9.5.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

9.5.3.2 Actions to compel compliance with the Dispute Resolution process.

9.5.3.3 All claims arising under federal or state statute(s), including antitrust claims

9.6 Commercial Arbitration

9.6.1 When both Parties agree to binding commercial arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association for commercial disputes or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will be Dallas, Texas, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within 60 days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within 30 days after the close of hearings. The arbitrator has no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof.

10. # NON-PAYMENT

10.1 Failure to pay all or any portion of any amount required to be paid may be grounds for disconnection of Resale Services, Network Elements and Collocation under this Agreement. If a Party fails to pay any 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, SBC TEXAS will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Resale Services, Network Elements

Conformed to Docket 28821

and Collocation furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to SBC TEXAS within fifteen (15) Calendar Days following receipt of the Billing Party's notice of Unpaid Charges.

- 10.2 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 SBC TEXAS' notice of Unpaid Charges:
- 10.2.1 notify SBC TEXAS 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 8.5.1 of this Agreement, together with the reasons for its dispute; and
 - 10.2.2 pay all undisputed Unpaid Charges to SBC TEXAS; and
 - 10.2.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.5, and
 - 10.2.4 the Non-paying Party is required to deposit Disputed Amounts into an interest bearing escrow account, it must provide written evidence that it has established an interest bearing escrow account that complies with all the terms set forth in Section 8.5 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.5 is furnished to SBC TEXAS, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 10.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 9.
- *10.4 After expiration of the written notice furnished pursuant to Section 10.1 hereof, if Non-paying Party continues to fail to comply with Section 10.2.1 through 10.2.4, inclusive, or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, SBC TEXAS shall, in addition to exercising any other rights or remedies it may have under Applicable Law, furnish a second written demand to Non-paying Party for payment within ten (10) calendar days of any of the obligations enumerated in Section 10.1. On the day that SBC TEXAS provides such written demand to the Non-paying Party, SBC TEXAS may also exercise any or all of the following options:
- 10.4.1 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
 - 10.4.2 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.
- 10.5 Notwithstanding anything to the contrary in this Agreement, SBC TEXAS' exercise of any of its options under Section 10.5, 10.5.1 and 10.5.2:

*1 Order on Reconsideration dated May 11, 2005: SBC 39-CJP 21.

- 10.5.1 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
- 10.5.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.
- 10.6 A copy of the demand provided to the Non-paying Party under Section 10.5 will be provided to the Commission.
- 10.7 If the Non-Paying Party fails to pay SBC TEXAS on or before the date specified in the demand letter provided under Section 10.5 of this Agreement, SBC TEXAS may, provided that the undisputed amount of the Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by SBC TEXAS to the Non-Paying Party for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law:
 - 10.7.1 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
 - 10.7.2 disconnect any Resale Services, Network Elements and/or Collocation furnished under this Agreement. Disconnection of services shall occur for all services provided from SBC TEXAS for the Non-Paying Party's Billed Account Number (BAN).
- 10.8 Within five (5) calendar days following any such disconnection, SBC TEXAS will notify each Resale End User that because of Non-Paying Party's failure to pay SBC TEXAS, the End User's local service will continue for an additional thirty (30) calendar days and that the End User has thirty (30) calendar days from the disconnection date to select a new Local Service Provider. SBC TEXAS. SBC TEXAS will notify the Commission of the names of all Resale End Users who received a notice under Section 10.9.
- 10.9 If any Resale End User fails to select a new Local Service Provider within thirty (30) calendar days of the disconnection, SBC TEXAS may terminate the Resale End User's service.
- 10.10. SBC TEXAS will notify the Commission of the names of all Resale End Users whose local service was terminated pursuant to Section 10.10.
- 10.11 Non-Paying Party shall be responsible for all charges for any service furnished by SBC TEXAS to any End User pursuant to Section 10.9 hereof.
 - 10.11.1 Nothing in this Agreement shall be interpreted to obligate SBC TEXAS to continue to provide local service to any Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SBC TEXAS has with regard to such Resale End Users under Applicable Law.

11. NOTICES

- 11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent (i) by certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; (ii) by personal delivery or by overnight courier using a recognized commercial courier service with services prepaid and proof of delivery requested; or (iii) by facsimile. Such notices shall be deemed received by the Party to whom they are addressed as follows: (a) if sent by

certified mail or first class U.S. Postal Service, upon receipt or should delivery be declined, upon the first attempted delivery, as reflected in the records of the U.S. Postal Service; (b) if sent by personal delivery or by overnight courier, upon receipt or should delivery be declined, upon the first attempted delivery, as reflected in the records of the courier service; and (c) if by facsimile, on the next business day following the date of transmission; provided, however, that notices sent by facsimile are also sent by one of the other acceptable delivery methods and notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

11.2 If to CLEC:

See CLEC notice page, which is attached after the signature page.

11.3 If to SBC TEXAS:
SBC 13-State Contact
Contract Management
Attn: Notices Manager
311 S. Akard, 9th Floor
Dallas, Texas 75202-5398
214-464-2006 (Fax)

11.4 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) Business days' prior written notice to the other Party in compliance with this Section.

11.5 Any notice or other communication will be deemed to be given when received.

12. TAXES

12.1 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, these Taxes shall be billed as a separate item on the invoice.

12.2 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 the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. The following provisions govern the backbilling of Taxes by the providing Party:

12.2.1 Taxes for which the purchasing Party is liable: with respect to Taxes for which the purchasing Party is liable, the providing Party shall use reasonable best efforts to bill the purchasing Party for such Tax simultaneously with the bill for service to which the Tax

relates; however, the purchasing Party shall remain responsible for such Tax for the applicable statute of limitations period.

- 12.2.2 Taxes for which the providing Party is liable: With respect to Taxes for which the providing Party is liable, the providing Party may backbill the purchasing Party for any surcharges based on such Taxes and permitted by Applicable Law, subject to the same time limits that apply to the services to which the Taxes relate, as set forth in Section 2.3 of Attachment 28, Comprehensive Billing Attachment.
- 12.2.3 Notwithstanding Section 12.2.2 above, if as a result of a notice of proposed adjustment by a taxing authority, the taxing authority imposes a Tax on the providing party, the providing party may back bill the Tax to the purchasing party for a period, not to exceed four years from the date of the notice of proposed adjustment. In order for the providing party to be permitted to backbill a tax under this Section, the purchasing party must be notified of the audit determination from which the surcharge results, within 30 days of the notice of proposed adjustment but in no event less than ten days before the last day, under applicable law, for the purchasing party to exercise any rights it might have to contest the notice of proposed adjustment.
- 12.3 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.
- 12.4 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 to the extent provided in Section 12.2 above and all subsections thereunder; 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.
- 12.5 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.
- 12.6 If either Party is audited by a taxing authority or other governmental entity, 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.

- 12.7 To the extent a sale is claimed to be for resale 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.
- 12.8 With respect to any Tax or Tax controversy covered by this Section 12, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any a Tax that it previously billed, or was billed 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.
- 12.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 12 shall be sent in accordance with Section 11 hereof.

13. FORCE MAJEURE

- 13.1 Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will 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 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 upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

14. PUBLICITY

- 14.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 14.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

15. NETWORK MAINTENANCE AND MANAGEMENT

- 15.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- 15.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party will maintain the capability of respectively implementing basic protective controls such as "Cancel To" or "Call Gap."
- 15.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

16. LAW ENFORCEMENT AND CIVIL PROCESS

16.1 Intercept Devices

- 16.1.1 Local and federal law enforcement agencies may periodically request information or assistance from either Party. When either Party receives a request associated with a customer of CLEC, the receiving Party will advise the law enforcement agency (LEA) that 1) this is a resold service; 2) SBC TEXAS is the underlying local service provider and CLEC provides the billing and customer care to its end-user customers; 3) an interception access point will be provided by SBC TEXAS; 4) both carriers should be named and served in the legal demand. SBC TEXAS should be named and served to provide the LEA with all inbound and outbound call detail records, the intercept access point and all technical assistance. CLEC should be named and served in the legal demand to provide verification of customer billing information (name and address) and copies of customer billing records; and 5) SBC TEXAS is responsible for billing any charges for services incurred by the LEA. However, if the LEA insists that SBC TEXAS immediately provide any requested information in its possession, and/or insists that SBC TEXAS not communicate with any other party about the request for information, including CLEC, then SBC TEXAS shall be permitted to comply with the LEA's valid request.

- 16.1.2 Should either Party receive a court order authorizing surveillance on the other Party's End User, the Party in receipt shall unless prohibited by the terms of such court order refer such order to the Party that serves the End User. Should a court order pertain to an CLEC customer (trap & trace, pen register or wiretap) or an ALS Type II customer (pen register or wiretap), the Party in receipt will request the issuing authority to amend the order, naming both Parties, and serve both Parties concurrently. SBC TEXAS shall provide law enforcement with all necessary assistance, including plant information and local loop access, to facilitate implementation of court orders pertaining to pen registers or wiretaps. Additionally, SBC TEXAS shall provision on its equipment trap & trace orders pertaining to CLEC Local customers. As specified in Section 16.4.3, below SBC TEXAS may bill the appropriate law enforcement agency for these services under its customary practices. Once CLEC implements CALEA solutions in its switches, CLEC will assume full responsibility for the implementation of court-ordered surveillance on ALS Type II customers.

16.2 Subpoenas

- 16.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving party is able to do so; if response requires the assistance of the other Party, such assistance will be provided by the other Party. Should the subpoena demand AMA records (call dump) for an CLEC End User, the Party in receipt will request the issuing authority to amend the order, naming both Parties, and serve both Parties concurrently. SBC TEXAS shall provide the issuing authority with the requested data. As specified in Section 16.4.3 below, SBC TEXAS may bill the appropriate law enforcement agency for these services under its customary practices.

16.3 Law Enforcement Emergencies

- 16.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

16.4 Law Enforcement Interface

- 16.4.1 SBC TEXAS will provide CLEC with a SPOC with whom to interface on a twenty-four (24) hour, seven (7) day a week basis for situations involving immediate threat to life or at the request of law enforcement officials. Court orders authorizing surveillance of CLEC customers provisioned on SBC TEXAS facilities (CLEC Local and ALS Type II, as hereinafter defined) shall be served on both CLEC and SBC TEXAS. SBC TEXAS shall provide law enforcement with all necessary assistance, including plant information and local loop access, to facilitate implementation of such court orders. Once CLEC implements CALEA solutions in its switches, CLEC will notify SBC and will assume full responsibility for the implementation of court-ordered surveillance on ALS Type II customers.

- 16.4.1.1 As used in this Article, the term ALS Type II shall mean customers connected to the CLEC network through SBC TEXAS-owned facilities. ALS Type II customers are located in a building which is connected to an SBC TEXAS Central Office by an SBC TEXAS-owned cable using customer's premise equipment connected to that cable. At the SBC TEXAS Central Office utilizing collocation arrangements, ALS Type II customer's circuit(s) are connected to an CLEC fiber-optic facility which transports traffic to and from a CLEC Central Office.
- 16.4.2 When the end-user to be tapped, traced, etc. is an CLEC Local or ALS Type II customer provisioned on SBC TEXAS facilities, SBC TEXAS shall advise the requesting law enforcement agency to name both CLEC and SBC TEXAS in the court order and serve both carriers. SBC TEXAS shall adhere to all terms of an applicable court order and, unless prohibited by the terms of such applicable court order, notify CLEC directly of the law enforcement agency request within one (1) business day of receiving the request. SBC TEXAS shall provide law enforcement with all necessary assistance, including plant information and access to the local loop, to facilitate implementation of such court orders. Once CLEC implements CALEA solutions in its switches, CLEC will assume full responsibility for the implementation of court-ordered surveillance on ALS Type II customers.
- 16.4.3 Each Party shall bill the appropriate law enforcement agency for these services under its customary practices and reserve the right to take action to collect from the LEA where reimbursement is provided for by statute. Where the law enforcement agency will not reimburse the Party for its compliance with a court order or other request for information, each Party shall be responsible for its own costs associated with compliance or assisting the other Party to comply.
- 16.5 Annoyance Calls. SBC TEXAS agrees to work cooperatively and jointly with CLEC in investigating annoyance/harassing calls to any CLEC customer where SBC TEXAS' cooperation, services, unbundled network elements (including operational support systems), facilities or information are needed to resolve the annoyance/harassing call(s) to the CLEC customer. The SBC TEXAS Call Trace Center will handle requests received from CLEC personnel on behalf of CLEC customers. SBC TEXAS will provide service to CLEC customers on annoyance/harassing calls that is at parity with the level of service SBC TEXAS provides its own customers.
- 16.6 Soft Dial Tone. To the extent required by law and subject to such additional conditions as the Parties may require, SBC TEXAS shall provide soft dial tone to CLEC for the use of its customers.

17. CHANGES IN SUBSCRIBER CARRIER SELECTION

- 17.1 Each Party must obtain end user authorization prior to requesting a change in the end users' provider of local exchange service (including ordering end user specific Unbundled Network Elements) and must retain such authorizations pursuant to FCC and state rules. The Party submitting the change request assumes responsibility for applicable charges as specified in Subscriber Carrier Selection Changes at 47 CFR 64.1100 through 64.1170 and any applicable state regulations.
- 17.2[#] When an end user authorizes a change in his selection of local service provider or discontinues service, each party shall release the customer specific facilities. SBC TEXAS shall be free to connect the end user to any local service provider based upon the local service provider's request and assurance that proper end user authorization has been obtained. Further, when an end user

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abandons a premise (i.e., vacates a premise without disconnecting service), SBC TEXAS is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities per the local service provider's request. When an CLEC resale end user has abandoned a premise (i.e. vacates a premise without disconnecting service, CLEC will cooperate with the new local service provider to confirm that the premise is abandoned by providing a timely response to the new local service provider.

- 17.3 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service ("slamming") on behalf of the other Party or a third party other than as required by federal or state law. At CLEC's written request, SBC will investigate an alleged incidence of slamming involving CLEC, and only in such CLEC authorized instances shall SBC charge CLEC; providing such charge shall be a cost-based or mutually agreed fee for providing the investigation.

18. AMENDMENTS OR WAIVERS

- 18.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition.
- 18.2 Intentionally Left Blank.
- 18.2.1# In order to execute an amendment to this Agreement, a Party shall request such amendment in writing. Such request shall include details regarding the Section or Sections to be amended and shall include the proposed language changes.
- 18.2.2 Within 30 days from its receipt of the request, the other Party shall accept the proposed amendment in writing or shall deliver written notice to the other Party either rejecting the requested amendment in its entirety, or inviting the prompt commencement of good faith negotiations to arrive at mutually acceptable terms. If the non-requesting Party rejects the requested amendment in its entirety, the requesting Party may request the prompt commencement of good faith negotiations to arrive at mutually acceptable terms, but there shall be no obligation on either Party to continue such negotiations longer than a period of 45 days if the Parties cannot arrive at mutually acceptable amendment terms.
- 18.2.3 If mutually acceptable terms are not agreed upon within 45 days after the delivery of the written notice requesting the commencement of negotiations, or if at any time during this period (or a mutually agreed upon extension of this period), the Parties have ceased to negotiate (other than by mutual agreement) for a period of 10 consecutive days, the amendment shall be resolved in accordance with the Dispute Resolution provisions set forth in Section 9 of this Agreement. Neither Party may pursue dispute resolution pursuant to this Section 18.2.3 with respect to any matter that, if agreed to by the other Party, would have the effect of incorporating into the Agreement a provision that the Party proposing the amendment had unsuccessfully sought in any arbitration pursuant to Section 252 of the Act leading to the adoption of this Agreement. Further, neither Party may invoke the provisions of this Section 18.2.3 more than once during the term of the Agreement.
- 18.2.4 Nothing in this Section 18.2 shall affect the right of either Party to pursue an amendment to this Agreement pursuant to Section 3 (Intervening Law), or Section 252(i) of the Act.

19. AUTHORITY

- 19.1 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.

20. BINDING EFFECT

- 20.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

21. CONSENT

- 21.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

22. EXPENSES

- 22.1 Except as specifically set out in this Agreement, each party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

23. HEADINGS

- 23.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

24. RELATIONSHIP OF PARTIES

- 24.1 This Agreement will not establish, be interpreted as establishing, or be used by either party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

25. CONFLICT OF INTEREST

- 25.1 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 arranging or negotiation of this Agreement or associated documents.

26. MULTIPLE COUNTERPARTS

- 26.1 This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one, and the same document.

27. THIRD PARTY BENEFICIARIES

- 27.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and will not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

28. REGULATORY APPROVAL

- 28.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.
- 28.2 The Parties understand and agree that this Agreement will be filed with the Commission for approval by such Commission (or the FCC if the Commission fails to act) pursuant to Section 252 of the Act.

Each Party agrees that this Agreement is satisfactory to them as an agreement under Sections 251 and 252 of the Act. If arbitrated, in whole or in part, each Party agrees that this Agreement conforms to the Order of the Commission approving the Agreement, and agrees to fully support approval of this Agreement by the Commission (or the FCC) under Section 252 of the Act without modification; provided, however, that each Party may exercise its right to judicial review under Section 252(e)(6) of the Act, or any other available remedy at law or equity, with respect to any matter included herein by arbitration under the Act. If the Commission, the FCC or any court rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion and related provisions; provided that such rejected portion shall not affect the validity of the remainder of this Agreement. The Parties acknowledge that nothing in this Agreement shall limit a Party's ability, independent of such Party's agreement to support and participate in the approval of this Agreement, to assert public policy issues relating to the Act.

29. TRADEMARKS AND TRADE NAMES

- 29.1 Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever, absent written consent of the other Party.

30. REGULATORY AUTHORITY

- 30.1 SBC TEXAS will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. CLEC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to CLEC Customers contemplated by this Agreement. CLEC will reasonably cooperate with SBC TEXAS in obtaining and maintaining any required approvals for which SBC TEXAS is responsible, and SBC TEXAS will reasonably cooperate with CLEC in obtaining and maintaining any required approvals for which CLEC is responsible.
- 30.2 Except as otherwise provided in this Agreement the Parties agree that the rates, terms and conditions of this Agreement will not be superseded by the rates, terms and conditions of any tariff SBC TEXAS may file, absent Commission order to the contrary. The Parties agree that CLEC is not precluded from ordering products and services available under any effective SBC TEXAS tariff or any tariff that SBC TEXAS may file in the future, provided that the products and services are not already available under this Agreement, and provided that CLEC satisfies all conditions contained in such tariff that are material to the particular tariff offering, including, but not limited to, the rates for the selected product or service, and the terms and conditions regarding provisioning. Provided, however, that CLEC shall not be bound by the general terms and conditions of the tariff that are otherwise addressed in this Agreement.
- 30.2.1[#] CLEC may also order from a tariff a product or service that is available in its Agreement. Similarly, this Section does not impair SBC TEXAS' right to file tariffs nor does it impair SBC TEXAS' right to file tariffs proposing new products and services and changes in the prices, terms and conditions of existing products and services, including discontinuance or grandfathering of existing features or services, of any telecommunications services that SBC TEXAS provides or hereafter provides to CLEC under this Agreement pursuant to the provision of Attachment 1: Resale, nor does it impair CLEC's right to contest such tariffs before the appropriate Commission, subject to any defenses or arguments SBC TEXAS might make in response to CLEC's contesting of such tariffs.

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31. INTENTIONALLY LEFT BLANK

32.# VERIFICATION REVIEWS

- 32.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Billed (auditing) Party may audit the Billing Party's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of the Billing (audited) Party's billing and invoicing. The Billing Party may audit the Billed Party's books, records and other documents once in each Contract Year for verification of the accuracy of information that the Billing (auditing) Party is entitled, under this Agreement, to rely on in billing and invoicing for services provided to the Billed (audited) Party hereunder. The Parties may employ other persons or firms for this purpose. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 32.2 The Billing Party will promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the Billed 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. The credit shall include interest on the overpayment, which interest shall be computed in accordance with Section 8.2.1 of this Agreement. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in Section 9 of this Agreement.
- 32.3 Each Party will cooperate fully in any audit performed pursuant to 32.1, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the Billing Party's bills. The audit will be conducted during normal business hours at an office designated by the Party being audited. The Parties agree to retain records of call detail for two years from when the calls were initially reported to the other Party.
- 32.4 Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the audit pursuant to Section 32.1 found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by the Billed Party for Resale services, Network Elements, Combinations or usage based charges provided during the period covered by the audit.
- 32.5 Except as may be otherwise provided in this Agreement, audits will be at the auditing Party's expense.
- 32.6 This Section 32 also applies to the audit by the Billing Party of the Billed Party's books, records, and other documents related to the development of the percent local usage (PLU) used to measure and settle jurisdictionally unidentified traffic, including but not limited to calls for which calling party number (CPN) is not transmitted, in connection with Attachment 12: Inter-carrier Compensation. If the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the remainder of current quarter and for the subsequent quarter following the completion of the audit. If the PLU is adjusted based upon the audit results, the Billing Party may audit the Billed Party again during the subsequent nine (9) month period, notwithstanding any other provisions in the Agreement. If as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of the subsequent audit which is to happen within nine (9) months of the initial audit.

- 32.7 Information obtained or received by either Party in connection with Sections 32.1 through 32.6 will be subject to the confidentiality provisions of Section 6 of this Agreement.

33. COMPLETE TERMS

- 33.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.
- 33.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of the Party sought to be bound. Unless otherwise agreed by the Parties, the rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission.

34. COOPERATION ON PREVENTING END USER FRAUD

- 34.1 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 34.2 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation referenced in this Section 34 will include providing to the other Party, upon request, information concerning end users 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.
- 34.3 SBC TEXAS will make available to CLEC all present and future fraud prevention or revenue protection features, including prevention, detection, or control functionality to the same extent that SBC TEXAS provides such protection to itself. These features include, but are not limited to, screening codes and call blocking of international (011+), 900 and 976 numbers. These features may include: (i) disallowance of call forwarding to international locations (011+), (ii) coin originating ANI II digits; (iii) dial tone re-origination patches, (iv) terminating blocking of Toll Free Service (800) if SBC TEXAS is the provider of the Toll Free Service and (v) 900/976 blocking.
- 34.3.1 SBC TEXAS will provide to CLEC the same procedures to detect and correct the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties in the same manner it does so for itself.
- 34.3.2 SBC TEXAS will make a reasonable effort to protect and correct against unauthorized physical attachment, e.g. clip-on fraud, to loop facilities from the Main Distribution Frame up to and including the Network Interface Device.
- 34.3.3 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.
- 34.3.4 In the event of fraud associated with an CLEC End User's account, including 1+ IntraLATA toll, ported numbers and Alternately Billed Service (ABS), the Parties agree that SBC TEXAS shall not be liable to CLEC for any fraud associated with CLEC's end user's account including 1+ IntraLATA toll, ported numbers and Alternately Billed Service