

# **INTERCONNECTION AGREEMENT-MISSOURI**

**between**

**Southwestern Bell Telephone, L.P.  
d/b/a SBC Missouri**

**and**

**CLEC**

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## INTERCONNECTION AGREEMENT - MISSOURI

This Interconnection Agreement - Missouri ("Agreement") is between CLEC ("CLEC"), a STATE OF INCORPORATION corporation, having its principal office at ADDRESS and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (hereinafter "SBC MISSOURI"), a Texas Limited Partnership, having its principal office at 211 S. Akard, Dallas, Texas 75202, (collectively "the Parties").

WHEREAS, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), the Parties wish to establish terms for the resale of SBC MISSOURI services and for the provision by SBC MISSOURI of Interconnection, Lawful Unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of Lawful Unbundled Network Elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.

WHEREAS, the Parties want to Interconnect their networks at mutually agreed upon Points of Interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential and business End Users over their respective Telephone Exchange Service facilities which are subject to this Agreement; and

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

WHEREAS, for purposes of this Agreement, CLEC intends to operate where Southwestern Bell Telephone, L.P. d/b/a SBC Missouri is the incumbent Local Exchange Carrier and CLEC, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to Lawful Unbundled Network Elements, Resale Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the SBC MISSOURI's areas by Missouri Public Service Commission ("MO-PSC" or "Commission"); and

WHEREAS, CLEC wishes to enter an agreement containing those terms and conditions.

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

### 1. INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SBC MISSOURI agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) Lawful Unbundled Network Elements, or combinations of such Lawful Unbundled Network Elements (Combinations), (c) Ancillary Functions and (d) Interconnection to CLEC. This Agreement also sets forth the terms and conditions for the interconnection of CLEC's network to SBC MISSOURI's network Intercarrier Compensation for intercarrier telecommunications traffic exchanged between CLEC and SBC Missouri.
- 1.2 Subject to the provisions of Attachment 6: Lawful Unbundled Network Elements (UNE) and upon CLEC request, SBC MISSOURI shall meet its Lawful UNE combining obligations as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. 467(May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.

- 1.3 Subject to Attachment 6: Lawful Unbundled Network Elements, in the event that SBC MISSOURI denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, SBC MISSOURI shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC MISSOURI shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.12 of Attachment 6: Lawful Unbundled Network Elements Appendix. In any dispute resolution proceeding, CLEC shall have the burden to prove that such combination request meets Lawful UNE combining obligations as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. 467(May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.
- 1.4 SBC MISSOURI 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.
- 1.5 This Agreement includes and incorporates herein the Attachments listed immediately following the Table of Contents of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 SBC MISSOURI's obligations under this agreement shall only apply to the specific operating area(s) or portion thereof in which SBC MISSOURI is then deemed to be the ILEC under the Act (the "ILEC Territory"), and only to the extent that the CLEC is operating and offering service to End Users identified to be residing in such ILEC Territory, except as specifically addressed in the Attachment 6 Lawful Unbundled Network Elements.
- 1.7 This Agreement sets forth the terms and conditions pursuant to which SBC MISSOURI agrees to provide CLEC with access to Lawful Unbundled Network Elements under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC MISSOURI's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC MISSOURI is only obligated to make available Lawful UNEs and access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC MISSOURI's incumbent local exchange areas. SBC MISSOURI has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC MISSOURI's incumbent local exchange areas. In addition, SBC MISSOURI is not obligated to provision Lawful UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC MISSOURI's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Agreement, and any associated provisions set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within SBC MISSOURI's incumbent local exchange area(s) in MISSOURI when this Agreement has been approved by the Commission and is in effect.
- 1.8 Throughout this Agreement, wherever there are references to unbundled network elements that are to be provided by SBC MISSOURI under this Agreement, the Parties agree and acknowledge that their intent is for the Agreement to comply with Section 1.7 above, and require only the provision of Lawful UNEs, regardless of whether the term "Lawful" is used as part of the reference to unbundled network elements.
- 1.9 Successor Rates

1.9.1 Certain of the rates, prices and charges set forth in the pricing appendix have been established by the MISSOURI Public Service Commission cost proceedings or dockets initiated under or pursuant to the Act. If during the Term the Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 13.

1.10 Affiliates

1.10.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind SBC MISSOURI, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between SBC MISSOURI and any such CLEC affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC affiliate for the term of this Agreement as stated herein until either SBC MISSOURI or CLEC or any such CLEC affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supercede a currently effective interconnection agreement between any such CLEC affiliate and SBC MISSOURI until the expiration of such other agreement.

**2. GENERAL RESPONSIBILITIES OF THE PARTIES**

2.1 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.

2.2 Lawful UNE-based Switch Port providers are responsible for administering their End User records in a LIDB.

2.3 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:

2.3.1 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.

2.3.2 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.

2.3.3 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.

2.3.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 2.3 through 2.3.3 of this Agreement.

- 2.3.5 The Parties agree that companies affording the insurance coverage required under Section 2.3 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.
- 2.3.6 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.
- 2.3.7 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:
- 2.3.7.1 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 the State of MISSOURI covered by this Agreement or the employee's state of hire; and
- 2.3.7.2 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
- 2.3.7.3 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.
- 2.3.8 This Section 2.3 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.
- 2.4 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert its state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or Lawful Unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services on the signature page of this Agreement and provide SBC MISSOURI with a copy.
- 2.5 When an End User changes its service provider from SBC MISSOURI to CLEC or from CLEC to SBC MISSOURI and does not retain its former telephone number, the Party formerly providing service to such End User shall furnish a Referral Announcement on the original telephone number that specifies the End User's new telephone number.
- 2.6 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 2.7 This Agreement contains comprehensive OSS terms and conditions. CLEC represents, warrants and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to Lawful UNEs, resold services or other services covered by this Agreement, and for which this Agreement contains explicit rates, terms, and conditions.
- 2.8 The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties will agree upon a rate or charge to include



in this Agreement before the product or service is ordered or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

### **3. ASSURANCE OF PAYMENT**

- 3.1 Upon request by SBC MISSOURI, CLEC will provide SBC MISSOURI with adequate assurance of payment of amounts due (or to become due) to SBC MISSOURI.
- 3.2 Assurance of payment may be requested by SBC MISSOURI if:
  - 3.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made a least twelve (12) consecutive months of timely payments to SBC MISSOURI for charges incurred as a CLEC; or where CLEC is doing or has done business as a local service provider,
  - 3.2.2 in SBC MISSOURI's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or
  - 3.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC MISSOURI (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.4); or
  - 3.2.4 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 3.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC MISSOURI's option, consist of:
  - 3.3.1 a cash security deposit in U.S. dollars held by SBC MISSOURI ("Cash Deposit") or
  - 3.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC MISSOURI naming SBC MISSOURI as the beneficiary thereof and otherwise in form and substance satisfactory to SBC MISSOURI ("Letter of Credit").
- 3.4 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC MISSOURI, for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC MISSOURI under this Agreement.
- 3.5 To the extent that SBC MISSOURI elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 3.6 A Cash Deposit will accrue simple interest, however, SBC MISSOURI will not pay interest on a Letter of Credit.
- 3.7 SBC MISSOURI may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
  - 3.7.1 CLEC owes SBC MISSOURI undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or

- 3.7.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 3.7.3 The expiration or termination of this Agreement.
- 3.8 If SBC MISSOURI draws on the Letter of Credit or Cash Deposit, upon request by SBC MISSOURI, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 3.4.
- 3.9 Notwithstanding anything else set forth in this Agreement, if SBC MISSOURI makes a request for assurance of payment in accordance with the terms of this Section, then SBC MISSOURI shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished SBC MISSOURI with the assurance of payment requested; provided, however, that SBC MISSOURI will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.
- 3.9.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, SBC MISSOURI may also invoke the provisions set forth in Section 14.
- 3.10 The fact that a Cash Deposit or Letter of Credit is requested by SBC MISSOURI shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

#### **4. EFFECTIVE DATE AND TERM OF AGREEMENT**

- 4.1 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.
- 4.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on **date = 2yr plus 90 days**, provided; however, should CLEC implement (i.e. provided assurance of payment, ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on **date = 1 yr** (the "Term").
- 4.3 If either Party desires to negotiate a successor agreement to this Agreement, such Party must provide the other Party with a written request to negotiate such successor agreement (Request to Negotiate/Notice of Expiration or "Request/Notice") not earlier than 365 calendar days prior to the expiration and not later than 180 calendar days prior to the expiration of this Agreement.
- 4.4 If a Request/Notice is not received pursuant to Section 4.3 then this Agreement shall remain in full force and effect on and after the expiration of the Term on a month-to-month basis until terminated pursuant to this Section or Sections 4.6 or 4.7. During any month-to-month extension of this Agreement, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which SBC MISSOURI received CLEC's Section 252(a)(1) Request to Negotiate.
- 4.5 If CLEC submits a Request under Sections 251/252 (i) of the Act for successor agreement or SBC MISSOURI submits a Notice, the Request/Notice does not activate the negotiation timeframe set forth in this Agreement. If CLEC's Request is pursuant to Section 252 (a)(1), CLEC will delineate the items desired to

be negotiated. Not later than 45 days from receipt of said Request/Notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement. If CLEC's Request is made pursuant to Section 252(i), the Agreement selected for adoption will be prepared for execution by the Parties.

- 4.6 If at any time during the Section 252(a)(1) negotiation process (whether prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal either a request to adopt a successor agreement under Section 252(i) of the Act or an affirmative statement that CLEC does not wish to pursue a successor agreement with SBC MISSOURI for the state of MISSOURI. 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 SBC MISSOURI receives CLEC's notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day after SBC MISSOURI's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the adoption of the successor agreement under Section 252(i), then the Parties shall have no further obligations under this Agreement except those set forth in Section 4.10 of this Agreement.
- 4.7 If the CLEC fails to timely respond to SBC MISSOURI's Section 4.3 Notice, 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 its Request or received SBC MISSOURI's Notice. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC's Request or receipt of SBC MISSOURI's Notice, the Parties shall have no further obligations under this Agreement except those set forth in Section 4.10 of this Agreement.
- 4.8 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful 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 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 4.8 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.
- 4.9 If pursuant to Section 4.4 this Agreement continues in full force and effect on a month-to-month basis after the expiration of the Term, either Party may terminate this Agreement by delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 4.6 and 4.7. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.9 other than its obligations under Sections 4.6 and 4.7.
- 4.10 Upon termination or expiration of this Agreement in accordance with Sections 4.6 or 4.7.
  - 4.10.1 Each Party shall continue to comply with its obligations set forth in Section 51 Survival of Obligations; and
  - 4.10.2 Each Party shall promptly pay all amounts owed under this Agreement.
- 4.11 In the event of expiration or termination of this Agreement other than pursuant to Section 4.6, SBC MISSOURI and CLEC shall cooperate in good faith to effect an orderly and timely transition of service provided under this Agreement to CLEC or to another vendor but in any event not later than the 91<sup>st</sup> day after the expiration or termination of this Agreement. So long as CLEC fulfills said obligation to effect an orderly and timely transition of service, and continues to pay SBC MISSOURI for the charges incurred during the transition of service, SBC MISSOURI 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. CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End

Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement; and CLEC will relinquish Lawful Unbundled Network Element facilities pursuant to this Agreement.

- 4.12 Should CLEC opt to incorporate any provision for interconnection, service, or Lawful Unbundled Network Element from another Commission-approved interconnection agreement into this Agreement pursuant to Section 252(i) of the Act and 47 C.F.R. § 51.809, such incorporated provision shall expire on the date it would have expired under the interconnection agreement from which it was taken. Should CLEC opt to incorporate any provision for interconnection, service or Lawful Unbundled Network Element from this Agreement into another Commission-approved interconnection agreement pursuant to Section 252(i) of the Act, the provision from this Agreement shall expire on the date specified in Section 4.1 above and shall not control the expiration date of any other provisions of the other interconnection agreement. All monetary obligations of the Parties to one another under the immediately previous interconnection agreement between the Parties shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement.

## 5. ASSIGNMENT

### 5.1 Assignment of Contract

- 5.1.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated third party without the prior written consent of SBC MISSOURI. Any attempted assignment or transfer that is not permitted is void *ab initio*.
- 5.1.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to SBC MISSOURI; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with SBC MISSOURI under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

### 5.2 Corporate Name Change and/or change in "d/b/a" only

- 5.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per end user record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.

### 5.3 Company Code Change

- 5.3.1 Any assignment or transfer of an interconnection agreement associated with the transfer or acquisition of "assets" provisioned under that interconnection agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 5.3.1, "assets" means any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under that interconnection agreement. CLEC shall provide SBC MISSOURI with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain SBC MISSOURI's consent. SBC MISSOURI shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, SBC MISSOURI's consent to any CLEC Company Code Change is contingent upon cure of any outstanding charges owed under this Agreement and any

outstanding charges associated with the “assets” subject to the CLEC Company Code Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.

- 5.3.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.
- 5.4 Assignment of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service.
- 5.4.1 Any assignment or transfer of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is a Party to this Agreement shall provide SBC MISSOURI with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC’s written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding charges associated with any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service to be transferred. In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the terms of the acquiring CLEC’s agreement.
- 5.4.2 Both CLECs involved in any CLEC to CLEC Mass Migration shall comply with all Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to end users. The acquiring CLEC shall be responsible for issuing all service orders required to migrate any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder. The appropriate service order charge or administration fee (for interconnection) will apply as specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC’s interconnection agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC’s agreement. In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.
- 5.5 Project Coordination
- 5.5.1 SBC MISSOURI will provide project management support to effectuate changes of the types identified in Sections 5.2, 5.3, and 5.4.
- 5.5.2 SBC MISSOURI will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should SBC MISSOURI’s most current version of LSOR or ASOR guidelines not support the required order activity, SBC MISSOURI will issue service orders at the manual rate, as specified in the Appendix Pricing, Schedule of Prices to this Agreement, based upon type of service provided, and on the condition that CLEC provides to SBC MISSOURI any and all information SBC MISSOURI reasonably requests to effectuate such changes.

## 6. CONFIDENTIALITY

- 6.1 Both Parties agree to treat proprietary information received from the other in accordance with Section 222 of the Act.
- 6.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such proprietary information that:
  - 6.2.1 Was at the time of receipt, already known to the receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the disclosing Party; or
  - 6.2.2 Is or becomes publicly known through no wrongful act of the receiving Party; or
  - 6.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; provided that the receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
  - 6.2.4 Is independently developed by an agent, employee, representative or Affiliate of the receiving Party and such person/entity is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the proprietary information; or
  - 6.2.5 Is disclosed to a Third Party by the disclosing Party without similar restrictions on such Third Party's rights; or
  - 6.2.6 Is approved for release by written authorization of the disclosing Party, but only to the extent of the authorization granted; or
  - 6.2.7 Is required to be made public or disclosed by the receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

## **7. LIABILITY AND INDEMNIFICATION**

- 7.1 Limitation of Liabilities
  - 7.1.1 Except as specifically provided in Attachment 25 DSL-MO, the Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in Sections 7.3.1 and 7.3.6, following, and for willful or intentional misconduct (including gross negligence), will not exceed the total of any amounts charged to CLEC by SBC MISSOURI under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.
- 7.2 No Consequential Damages
  - 7.2.1 EXCEPT AS OTHERWISE PROVIDED IN ATTACHMENT 17, NEITHER CLEC NOR SBC MISSOURI 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 PARTY), 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 THE LIABILITY OF EITHER SBC MISSOURI OR CLEC 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 THE SBC MISSOURI OR CLEC'S

NEGLIGENT ACT OR OMISSION OF EITHER PARTY HERETO OR THE NEGLIDENT ACT OR OMISSION THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 Obligation to Indemnify

7.3.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Party.

7.3.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

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

7.3.3.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.

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

7.3.3.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

7.3.3.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; and

- 7.3.3.1.2.2 no infringement would have occurred without such modification.
- 7.3.3.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.
- 7.3.4 CLEC acknowledges that its right under this Agreement to interconnect with SBC MISSOURI's Missouri network and to unbundle and/or combine SBC MISSOURI's Lawful Unbundled Network Elements (including combining with CLEC's network elements) may be subject to or limited by Intellectual Property rights (Intellectual Property means, including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.
- 7.3.5 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), *In the Matter of Petition of MCI for Declaratory Ruling*.
- 7.3.5.1 SBC MISSOURI agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each Lawful Unbundled Network Element necessary for CLEC to use such Lawful Unbundled Network Element in the same manner as SBC MISSOURI.
- 7.3.5.2 SBC MISSOURI shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any Lawful Unbundled Network Element in a different manner than used by SBC MISSOURI is entitled to use that Lawful Unbundled Network Element.
- 7.3.5.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SBC MISSOURI shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SBC MISSOURI under the vendor contract and the terms of the contract (excluding cost terms). SBC MISSOURI shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.
- 7.3.6 SBC MISSOURI hereby conveys no licenses to use such Intellectual Property rights and makes no 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 Lawful Unbundled Network Elements (including combining with CLEC's network elements) in SBC MISSOURI's 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 Lawful Unbundled Network Elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.5.1 to use its best efforts to obtain.
- 7.3.7 SBC MISSOURI does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Damages for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's interconnection with SBC MISSOURI's network and unbundling and/or combining-SBC MISSOURI's Lawful Unbundled 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 Lawful Unbundled Network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.5.1 to use its best efforts to obtain.
- 7.3.8 CLEC hereby agrees to release, indemnify and hold SBC MISSOURI harmless from and against all Damages arising out of, caused by, or relating to any Claim that CLEC's interconnection with SBC MISSOURI's network, or CLEC's use of SBC MISSOURI'Ss Lawful Unbundled Network Elements, or



unbundling and/or combining of SBC MISSOURI's Lawful Unbundled Network Elements (including combining with CLEC's network elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any Third Party Intellectual Property rights or constitutes a breach of contract rights of Third Parties.

7.3.9 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 Lawful Unbundled Network Element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that Lawful Unbundled Network Element including SBC MISSOURI.

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 in this section, 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, subject to consultation with the relevant Indemnitee. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that may 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. In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 7.

## 8. COMPLIANCE AND CERTIFICATION

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

- 8.2 Each Party warrants that it has obtained all necessary state certification required in MISSOURI prior to ordering any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 8.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 8.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

## **9. PAYMENT OF RATES AND CHARGES**

- 9.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days from the date of the invoice. For purposes of this Agreement, the "Bill Due Date" shall be defined to mean thirty (30) calendar days from the date of the invoice.
- 9.2 If CLEC fails to remit payment for any charges for services by the Bill Due Date, or if a payment or any portion of a payment is received from CLEC after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available to SBC MISSOURI as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge shall be assessed as provided in Sections 9.2.1 through 9.2.2, as applicable.
- 9.2.1 If any charge incurred under this Agreement that is billed out of any SBC MISSOURI billing system other than the SBC MISSOURI Customer Records Information System (CRIS) becomes Past Due, the unpaid amounts shall bear interest from the day following the Bill Due Date until the day paid at the lesser of (i) the rate used to compute the Late Payment Charge in the SBC MISSOURI intrastate access services tariff and (ii) the highest rate of interest that may be charged under Applicable Law. The application of interest (at the rate set forth in the preceding sentence) to any Past Due charge incurred under this Agreement that is billed out of any SBC MISSOURI billing system other than SBC MISSOURI's CRIS will comply with the process set forth in the SBC MISSOURI intrastate access services tariff.
- 9.2.2 If any charge incurred under this Agreement that is billed out of SBC MISSOURI's CRIS system is Past Due, the unpaid amounts shall bear interest from the Bill Due Date until paid. The interest rate applied to SBC MISSOURI CRIS-billed Past Due unpaid amounts shall be the lesser of (i) the rate used to compute the Late Payment Charge contained in the SBC MISSOURI General Exchange tariff for business End Users in Missouri or (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.
- 9.3 The Parties shall make all payments to one another via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by each Party. Remittance information will be communicated together with the funds transfer via the ACH network. The Parties must use the CCD+ or the CTX transaction set. The Parties will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by the Billing Party no later than the Bill Due Date of each bill or Late Payment Charges will apply. Neither Party will be liable for any delays in receipt of funds or errors in entries caused by the other Party or Third Parties, including the Paying Party's financial institution. Each Party is responsible for its own banking fees.
- 9.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. Each Party will be responsible for any Late Payment Charges resulting from that Party's failure to use electronic funds credit transfers through the ACH network.

- 9.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item that are listed in Section 9.2.1. The Non-Paying Party should utilize any existing and preferred form provided by the Billing Party to provide written notice of disputes to the Billing Party. The Non-Paying Party must pay when due:(i) all undisputed amounts to the Billing Party, and (ii) those disputed amounts that are required to be paid into escrow pursuant to this Section, which must be deposited 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:
- 9.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 9.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 9.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.
- 9.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the Non-Paying Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
- 9.4.4.1 The escrow account must be an interest bearing account;
- 9.4.4.2 All charges associated with opening and maintaining the escrow account will be borne by the Non-Paying Party;
- 9.4.4.3 That none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 9.4.4.4 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
- 9.4.4.5 Disbursements from the escrow account shall be limited to those:
- 9.4.4.5.1 authorized in writing by both the Non-Paying Party and the Billing Party (that is, signature(s) from representative(s) of the Non-Paying Party only are not sufficient to properly authorize any disbursement); or
- 9.4.4.5.1 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 9.7; or
- 9.4.4.5.2 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 9.7.
- 9.5 Disputed Amounts in escrow shall not be subject to late payment charges as set forth in Section 9.3.
- 9.6 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 13.
- 9.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties shall cooperate to ensure that all of the following actions are completed:
- 9.7.1 the Billing Party shall credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto, no later than the second Bill Due Date after resolution of the Dispute;

- 9.7.1.1 within ten (10) Business days after resolution of the Dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party shall be released to the Non-Paying Party, together with any accrued interest thereon;
- 9.7.1.2 within ten (10) Business days after resolution of the Dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon; and
- 9.7.1.3 no later than the third Bill Due Date after resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 9.4.
- 9.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 9.7.1.1 and Section 9.7.1.3 are completed within the times specified therein.
- 9.9 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the times specified in Section 9.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 9.10 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 9.10.1 Each additional copy of any bill provided for billing from SBC MISSOURI's Carrier Access Billing System (CABS) billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.
- 9.10.2 Bills provided to CLEC from SBC MISSOURI's CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.

## **10. LIMITATION ON BACK-BILLING AND CREDIT CLAIMS**

- 10.1 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.
- 10.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section 10 and is addressed separately in the Reciprocal Compensation Attachment.

## **11. DAILY USAGE FILE**

- 11.1 SBC MISSOURI will provide CLEC a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services and Lawful Unbundled Network Element usage sensitive services provided hereunder ("End User

Usage Data"). Such End User Usage Data will be provided by SBC MISSOURI in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for SBC MISSOURI. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Lawful Unbundled Network Element to the extent that similar usage sensitive information is provided to retail End Users of SBC MISSOURI, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by SBC MISSOURI in connection with Resale Services and Lawful Unbundled Network Elements provided by SBC MISSOURI. Procedures and processes for implementing the interfaces with SBC MISSOURI will be included in implementation requirements documentation.

- 11.2 To establish file transmission for the Daily Usage File, CLEC must provide to SBC MISSOURI a separate written request no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 11.3 Call detail for LEC-carried calls that are alternately billed to CLEC End Users' lines provided by SBC MISSOURI through Resale will be forwarded to CLEC as rated call detail on the DUF.
- 11.4 SBC MISSOURI will bill CLEC for Usage Extract furnished by SBC MISSOURI in accordance with the price(s) provided in the applicable Schedule of Prices under "Electronic Billing Information."
- 11.5 Interexchange call detail on Resale Services that is forwarded to SBC MISSOURI for billing, of the type which would otherwise be processed by SBC MISSOURI for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services will be passed through when SBC MISSOURI records the message.
- 11.6 CLEC is responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

## **12. ALTERNATELY BILLED TRAFFIC (ABT)**

- 12.1 As used herein, Alternate Billing Service (ABS) or Alternately Billed Traffic (ABT) shall mean a service that allows End Users to bill calls to accounts that are not associated with the originating line. There are three types of ABT: Calling card, collect, and third number billed calls. Billing and compensation for intraLATA ABT will be handled as described below.
- 12.2 When CLEC serves its End User via switch-based service, both Parties will settle tariffed ABT charges for calls accepted by each Party's End Users. The originating Party will pay the Party that has the billable End User a Billing and Collection (B&C) fee per billed message as set forth in the pricing schedule.

## **13. DISPUTE RESOLUTION**

- 13.1 Finality of Disputes
  - 13.1.1 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than 24 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.
- 13.2 Alternative to Litigation
  - 13.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for 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, the Parties agree to use the following

Dispute Resolution procedure with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.

### 13.3 Informal Resolution of Disputes

13.3.1 At the written request of a Party, 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 that were 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.

#### 13.3.2 Request for Expedited Resolution

13.3.2.1 When a dispute affects the ability of a party to provide uninterrupted service or hinders the provisioning of any service, functionality or network element, the party may file a complaint to initiate an expedited informal dispute resolution proceeding. This process applies to the following types of issues: establishment of service, service interruption, service outage or disconnection. This process is not intended to address complex business problems that do not preclude a CLEC from providing service, such as billing accuracy.

13.3.2.2 This process is in addition to any other dispute resolution process or procedure that exists under the rules and regulations of the Commission. The parties agree to recommend that the Commission appoint Commission Staff to the case to proceed on an expedited bases.

Any complaint filed pursuant to this procedure must include the following information:

- a) the specific circumstances that make the dispute eligible for the expedited dispute resolution process;
- b) a description of the particular service-affecting issue giving rise to the complaint;
- c) a description of the parties' efforts to resolve the disputed issue;
- d) A list of cross-references to the area or areas of the M2A applicable to the issue in dispute as applicable; and
- e) Any proposed resolution of the dispute.

The respondent shall file a response to the complaint within five business days after the filing of the complaint. The respondent shall serve a copy of the response on the complainant by hand-delivery or facsimile on the same day as it is filed with the Commission.

13.3.2.3 The parties agree to meet with the appointed Commission Staff within 10 business days, but no sooner than 5 business days, of the date the response is filed. The parties agree that Commission Staff has authority to oversee the discussion between the parties and may act in the capacity of the mediator.

13.3.2.4 If a party believes that a more formal proceeding is necessary, the party may file a Complaint to proceed according to the rules and regulations governing administrative procedure by the Commission and the parties agree to jointly recommend expedited handling of the complaint.

### 13.4 Billing Disputes

13.4.1 Each Party agrees to notify the other Party of a billing dispute by using the standard document, if any, made available by the Billing Party and may invoke the informal dispute resolution process described in Section 13.3. The Parties will endeavor to resolve the dispute within thirty (30) to sixty (60) calendar days after receipt of the Non-Paying Party's written notice. In order to resolve a billing dispute, the Non-Paying Party shall furnish the Billing Party written notice of (i) the date of the bill in question, (ii) CBA or BAN number of

the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed (vi) amount in question (vii) the reason that the Non-Paying Party disputes the billed amount and (viii) PON. To be deemed a "dispute" under this Section 13.4, the Non-Paying Party must provide evidence that it has paid the disputed amount.

13.4.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party receives notice of such dispute.

### 13.5 Formal Resolution of Disputes

13.5.1 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 matters not specifically addressed elsewhere in this Agreement that 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 Public Service Commission of Missouri. As an alternative to the dispute resolution procedures referenced in the preceding sentence, and in lieu thereof, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 13.6.

13.5.2 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.

### 13.6 Arbitration

13.6.1 When both Parties agree to binding arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of Telecommunications issues. Arbitration will be held in Topeka, Missouri 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 Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The Parties agree that, notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the arbitrator has no authority to order punitive, exemplary, multiple, or Consequential 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. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

## 14. NON-PAYMENT AND PROCEDURES FOR DISCONNECTION

14.1 Failure to pay all or any portion of any amount required to be paid may be grounds for disconnection of Resale Services, Lawful Unbundled Network Elements 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, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Resale Services, Lawful Unbundled Network Elements furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

- 14.1.1 SBC MISSOURI will also provide any written notification to the MISSOURI Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 14.2 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 the Billing Party's notice of Unpaid Charges:
  - 14.2.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 9.4 of this Agreement, together with the reasons for its dispute; and
  - 14.2.2 pay all undisputed Unpaid Charges to the Billing Party; and
  - 14.2.3 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 9.4, unless the nonpaying party is not required to escrow such amounts pursuant to Section 9.3 herein; and
  - 14.2.4 if the nonpaying 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 9.4 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 9.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 14.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 13.
- 14.4 After expiration of the written notice furnished pursuant to Section 14.1 hereof, if CLEC continues to fail to comply with Sections 14.2.1 through 14.2.4, inclusive, or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, SBC MISSOURI may, in addition to exercising any other rights or remedies it may have under Applicable Law, furnish a second written demand to CLEC for payment within five (5) Business Days of any of the obligations enumerated in Section 14.1. On the day that SBC MISSOURI provides such written demand to CLEC, SBC MISSOURI may also exercise any or all of the following options:
  - 14.4.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or
  - 14.4.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.
- 14.5 Notwithstanding anything to the contrary in this Agreement, SBC MISSOURI's exercise of any of its options under Section 4.4 and 14.4.2:
  - 14.5.1 will not delay or relieve CLEC's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and
  - 14.5.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.
- 14.6 A copy of the demand provided to CLEC under Section 14.4 will be provided to the Commission.
- 14.7 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand letter provided under Section 14.4 of this Agreement, the Billing Party may, provided that the undisputed amount



of the Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by SBC MISSOURI to CLEC for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law:

- 14.7.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
- 14.7.2 disconnect any Resale Services, Lawful Unbundled Network Elements and/or Collocation furnished under this Agreement.
- 14.7.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by SBC MISSOURI will comply with MISSOURI Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 14.8 Within five (5) calendar days following any such disconnection, SBC MISSOURI will notify each Resale End User that because of CLEC's failure to pay SBC MISSOURI, 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.
- 14.9 If any Resale End User fails to select a new Local Service Provider within thirty (30) calendar days of the disconnection, SBC MISSOURI may terminate the Resale End User's service.
- 14.10 SBC MISSOURI will notify the Commission of the names of all Resale End Users whose local service was terminated pursuant to Section 14.9.
- 14.11 CLEC shall be responsible for all charges for any service furnished by SBC MISSOURI to any End User pursuant to Section 14.8 hereof.
- 14.12 Nothing in this Agreement shall be interpreted to obligate SBC MISSOURI 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 MISSOURI has with regard to such Resale End Users under Applicable Law.

## 15. NOTICES

- 15.1 In the event any notices are required to be sent under the terms of this Agreement, they must be made in writing (unless specifically provided otherwise herein) they may be sent by mail, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested and are deemed to have been received five (5) calendar days after mailing in the case of first class or certified U.S. Post Service. Notice may also be given by personal delivery or by overnight courier, and will be deemed given upon receipt of personal delivery; or by overnight courier and will be deemed given the next Business Day. Notice may also be provided by facsimile, provided a paper copy is also sent by another method described in this Section, which will be deemed given on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone. 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:
- 15.2 If to CLEC:

CLEC Notice Person name, title  
CLEC Legal Name  
Address  
City, State, Zip

15.3 If to SBC MISSOURI:

Contract Management  
ATTN: Notices Manager  
Four SBC Plaza, 9<sup>th</sup> Flr.  
311 S. Akard St.  
Dallas, TX 75202-5398

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving ten (10) calendar days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

- 15.4 SBC MISSOURI communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.
- 15.5 SBC MISSOURI Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the transmission date set forth on the e-mail message.
- 15.6 CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.
- 15.7 CLEC shall submit a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom CLEC requests Accessible Letter notification be sent. CLEC shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of SBC MISSOURI's Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by SBC MISSOURI. SBC MISSOURI may, at its discretion, change the process by which the CLEC provides Accessible Letter recipient information. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 15.8 SBC MISSOURI shall provide a toll free facsimile number to CLEC for the submission of requests for Resale Services and Lawful Unbundled Network Elements under this Agreement; CLEC shall provide SBC MISSOURI with a toll free facsimile number for notices from SBC MISSOURI relating to requests for Resale Services and Lawful Unbundled Network Elements under this Agreement.

**16. TAXES**

- 16.1 With respect to any purchase of service under this Agreement, if any Federal, state or local government sales, use, excise, gross receipts, municipal fee, transfer, transaction or similar tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by Applicable Law, ordinance or tariff to be collected from a purchasing Party by the providing Party, except for (a) any Tax on either Party's existence, status, or income or (b) any corporate franchise Taxes or (c) any gross receipts or municipal fee taxes, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- 16.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable

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

- 16.3 With respect to any purchase hereunder of Interconnection, Resale Services, Lawful Unbundled 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. 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.
- 16.4 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.
- 16.5 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 16.2, will not collect such Tax during the effective period of the 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.
- 16.6 If applicable law excludes or exempts a purchase of 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 (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) 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.
- 16.7 With respect to any Tax or Tax controversy covered by this Section 16, the purchasing Party will be entitled to contest, pursuant to Applicable Law, and at its own expense, any Tax that it is ultimately obligated to pay. 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 will be entitled to the benefit of any refund or recovery 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.
- 16.8 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 16, shall be sent in accordance with Section 15 Notices hereof.

## 17. **FORCE MAJEURE**

- 17.1 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 (other than an obligation to make money payments) 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. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

## **18. PUBLICITY**

- 18.1 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.
- 18.2 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.

## **19. NETWORK MAINTENANCE AND MANAGEMENT**

- 19.1 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.
- 19.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network.
- 19.3 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 19.4 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to," "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 19.5 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 19.6 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.
- 19.7 Neither Party will use any Interconnection, Resale Service, network element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in a manner that interferes with or impairs service over any facilities of SBC MISSOURI, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party's. End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party will provide the other Party notice of the violation at the earliest practicable time.

## **20. LAW ENFORCEMENT AND CIVIL PROCESS**

### **20.1 Intercept Devices**

20.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a End User of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request.

### **20.2 Subpoenas**

20.2.1 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.

### **20.3 Law Enforcement Emergencies**

20.3.1 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.

## **21. CHANGES IN SUBSCRIBER CARRIER SELECTION**

21.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.

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

21.3 When an End User changes or withdraws authorization, each Party will release customer specific facilities belonging to the ILEC in accordance with the End User's directions, or the directions of the End User's agent. Further, when an End User abandons the premise, (that is, its place of business or domicile), SBC MISSOURI is free to reclaim the Lawful Unbundled Network Elements for use by another End User and is free to issue service orders required to reclaim such Lawful Unbundled Network Elements.

21.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local Exchange Service ("slamming") at the request of the other Party, provided, however, that each Party

shall cooperate with any investigation of a complaint alleging an unauthorized change in local Exchange Service at the request of the FCC or the Commission.

## **22. AMENDMENTS OR WAIVERS**

22.1 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.

## **23. INTERVENING LAW**

23.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36), including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004) and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), SBC MISSOURI shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Except to the extent that SBC MISSOURI has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC MISSOURI state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC MISSOURI's right to exercise its option at any time to adopt on a date specified by SBC MISSOURI the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice,

any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

## **24. AUTHORITY**

- 24.1 SBC MISSOURI represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. SBC MISSOURI represents and warrants that SBC Operations, Inc. has full power and authority to execute and deliver this Agreement as agent for SBC MISSOURI. SBC MISSOURI represents and warrants that it has full power and authority to perform its obligations hereunder.
- 24.2 CLEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of **STATE** and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.
- 24.3 Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

## **25. BINDING EFFECT**

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

## **26. CONSENT**

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

## **27. EXPENSES**

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

## **28. HEADINGS**

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

## **29. RELATIONSHIP OF PARTIES**

- 29.1 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.

## **30. CONFLICT OF INTEREST**



30.1 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.

### **31. MULTIPLE COUNTERPARTS**

31.1 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.

### **32. THIRD PARTY BENEFICIARIES**

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

### **33. REGULATORY APPROVAL**

33.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval of this Agreement. 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.

### **34. TRADEMARKS AND TRADE NAMES**

34.1 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. Nothing in this Agreement shall be construed as preventing either Party from publicly stating that it has executed this Agreement with the other Party.

### **35. REGULATORY AUTHORITY**

35.1 SBC MISSOURI 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 End Users contemplated by this Agreement.

### **36. COMMISSION INTERPRETATION OF SAME OR SUBSTANTIVELY SIMILAR LANGUAGE**

36.1 Any ruling by the Commission in a post interconnection agreement dispute interpreting the same or substantially similar language in another Interconnection Agreement shall be deemed applicable to the same or substantially similar language in this Agreement.

## **37. TARIFF REFERENCES**

- 37.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.
- 37.2 Wherever the term "Customer" is used in connection with SBC MISSOURI's retail tariffs, the term "Customer" means the ultimate "consumer" or the "End User" of any tariffed service.

## **38. VERIFICATION REVIEWS**

- 38.1 Subject to each Party's reasonable Confidentiality requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records, data, and other documents once in each twelve (12) month period with the audit period commencing not earlier than the date on which services were first supplied under this Agreement ("service start date") for the purpose of evaluating (i) the accuracy of the other Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 38.2 The scope of the audit shall be limited to the services specified in the written notice and to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date.
- 38.3 Such audit will take place at a time and place agreed on by the Parties and begins no later than thirty (30) calendar days after receipt of written notice and shall be completed no later than thirty (30) calendar days after the start of such audit.
- 38.4 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the twentieth calendar day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 38.5 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party will cooperate fully in any such audit, provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of the Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of End User(s) of Audited Party except the calling party number.
- 38.6 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 38.7 If any audit confirms any undercharge or overcharge, then the Audited Party will (i) promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the

accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 9.9, for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

- 38.8 Except as may be otherwise provided in this Agreement, audits shall be performed at the Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 38.9 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 38.1. Any additional audit shall be at the requesting Party's expense.
- 38.10 Either Party may audit the other Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by the Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.
- 38.11 Information obtained or received by either Party in connection with performance of an audit under this Section 38 will be subject to the confidentiality provisions of Section 6 of this Agreement.

## **39. COMPLETE TERMS**

- 39.1 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.
- 39.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission.

## **40. COOPERATION ON PREVENTING END USER FRAUD**

- 40.1 Neither Party shall be liable for any fraud associated with that Party's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Traffic (ABT). ABT is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABT calls: calling card, collect, and third number billed calls.
- 40.2 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.
- 40.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in the above paragraph 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.

- 40.4 SBC MISSOURI will provide notification messages via fax to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB.
- 40.4.1 SBC MISSOURI will use a Fraud monitoring system to determine suspected occurrences of ABT-related fraud for CLEC using the same criteria SBC MISSOURI uses to monitor fraud on its own accounts.
- 40.4.2 CLEC understands that Fraud monitoring alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud monitoring alert.
- 40.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud monitoring alert notification information twenty-four (24) hours per day seven (7) days per week.
- 40.4.4 For each alert notification provided to CLEC, CLEC may request a corresponding thirty-day (30-day) historical report of ABT-related query processing. CLEC may request up to three reports per alert.
- 40.5 ABT-related alerts are provided to CLEC at no additional charge.

#### **41. NOTICE OF NETWORK CHANGES**

- 41.1 SBC MISSOURI agrees to provide CLEC reasonable notice consistent with applicable Network Disclosure rules (adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335), of changes in the information necessary for the transmission and routing of services using SBC MISSOURI's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SBC MISSOURI's ability to upgrade its network through the incorporation of new equipment, new software or otherwise.
- 41.2 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with SBC MISSOURI's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

#### **42. GOOD FAITH PERFORMANCE**

- 42.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

#### **43. RESPONSIBILITY OF EACH PARTY**

- 43.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own

expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

#### **44. GOVERNMENTAL COMPLIANCE**

44.1 CLEC and SBC MISSOURI each will comply at its own expense with all Applicable Law related to i) its obligations under or activities in connection with this Agreement; of ii) its activities undertaken at, in connection with or relating to work locations. CLEC and SBC MISSOURI each agree to indemnify, defend, (at the other party's request) and save harmless the other, each of its officers, directors and employees from and against any Losses, Damages, Claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. Each Party, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary to provide the Lawful Unbundled Network Elements and Resale services pursuant to this Agreement.

#### **45. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION**

45.1 Disclosure of Potential Hazards

45.1.1 When and if CLEC notifies SBC MISSOURI that CLEC intends to enter or perform work pursuant to this Agreement in, on, or within the vicinity of any particular SBC MISSOURI building, manhole, pole, duct, conduit, right-of-way, or other facility (hereinafter "work location"), SBC MISSOURI shall timely notify CLEC of any Environmental Hazard at that Work Location of which SBC MISSOURI has actual knowledge, except that this duty shall not apply to any Environmental Hazard (i) of which CLEC already has actual knowledge or (ii) was caused solely by CLEC or (iii) would be obvious and apparent to anyone coming to the work location. For purposes of this Agreement, "Environmental Hazard" shall mean (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations; (ii) the presence of electrical cable in a conduit system; (iii) asbestos-containing materials; (iv) emergency exit routes and warning systems, if and to the extent owned or operated by SBC MISSOURI; and (v) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.

45.2 Evaluation of Potential Hazards

45.2.1 Without limiting the foregoing, after providing prior notice to SBC MISSOURI, CLEC shall have the right to inspect, test, or monitor any work location for possible Environmental Hazards as necessary or appropriate to comply with law or to protect its employees, contractors or others from the possible effects of Environmental Hazards. CLEC shall be responsible for conducting such inspections, testing or monitoring in a way that does not unreasonably interfere with SBC MISSOURI's business operations after consultation with SBC MISSOURI, and shall return SBC MISSOURI's property to substantially the same condition as it would have been without such inspections, testing or monitoring.

45.3 Managing Disturbed Materials and Media

- 45.3.1 If and to the extent that CLEC's activity at any work location involves the excavation, extraction, or removal of asbestos or other manmade materials or contaminated soil, groundwater, or other environmental media, then CLEC rather than SBC MISSOURI shall be responsible in the first instance for the subsequent treatment, disposal, or other management of such materials and media.
- 45.4 Indemnification
- 45.4.1 Each Party shall indemnify, on request defend, and hold harmless the other Party and each of its officers, directors and employees from any and all suits, Claims, Demands, losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with the violation or breach, by any employee of the indemnifying Party or other person acting on the indemnifying Party's behalf, of this Section 47.0 or any federal, state, or local environmental statute, rule, regulation, ordinance, or other Applicable Law or provision of this Agreement dealing with hazardous substances or protection of human health or the environment.
- 45.4.2 CLEC shall indemnify, on request defend, and hold harmless SBC MISSOURI and each of its officers, directors and employees from any and all suits, Claims, demands, Losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of CLEC, or by any person acting on CLEC's behalf, while at a work location or (ii) the removal or disposal of any hazardous substances by any employee of CLEC or by any person acting on CLEC's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance caused or created by CLEC or its contractors or agents.
- 45.4.3 SBC MISSOURI shall indemnify, on request defend, and hold harmless CLEC and each of its officers, directors and employees from any and all suits, Claims, demands, Losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), asserted by any government agency or other Third Party on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, at a work location or (ii) the removal or disposal of any hazardous substances by any employee of SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance-caused or created by SBC MISSOURI or its contractors or agents.

## **46. SUBCONTRACTING**

46.1 If any obligation is performed through a subcontractor, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors, and each Party will be solely responsible for payments due the Party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any Third Party in connection with the provision of Resale services or Lawful Unbundled Network Elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to Customer Proprietary Information (CPNI) or confidential information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or confidential information to the same extent the subcontracting Party is required to protect such information under the terms of this Agreement.

## **47. REFERENCED DOCUMENTS**

47.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, or publication of industry standards.

## **48. SEVERABILITY**

48.1 The Parties negotiated the terms and conditions of this Agreement for Interconnection, services and Lawful Unbundled Network Elements as a total arrangement and it is intended to be nonseverable. If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 13.

## **49. SURVIVAL OF OBLIGATIONS**

49.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding liability and indemnification, assurance of payment, payment of rates and charges, dispute resolution, taxes, publicity, subpoenas, relinquishing facilities, environmental contamination, subcontracting, governing law, performance measurements, disclaimer of warranty, Third Party beneficiaries, trademarks and tradenames, confidential information, Section 6, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

## **50. GOVERNING LAW**

- 50.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the domestic laws of the State of Missouri without regard to conflicts of laws principles, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Jefferson City, Missouri, and waive any and all objections to a Missouri venue.

## **51. PERFORMANCE MEASUREMENTS**

- 51.1 Performance Measures are discussed in Attachment 17.

## **52. DIALING PARITY; NUMBER PORTABILITY**

- 52.1 SBC MISSOURI will ensure that all CLEC End Users who are provisioning dial tone from SBC MISSOURI switches experience the same Dialing Parity as similarly-situated-End Users of SBC MISSOURI services, such that, for all call types: (i) an CLEC End User is not required to dial any greater number of digits than a similarly-situated SBC MISSOURI End User; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an CLEC End User is at least equal in quality to that experienced by a similarly-situated SBC MISSOURI End User; and (iii) the CLEC End User may retain its local telephone number. The Parties further agrees to provide Number Portability in accordance with the requirements of the Act. Specific requirements concerning Number Portability are set forth in Attachment 14: Location Routing Number - Permanent Number Portability.

## **53. BRANDING**

- 53.1 Specific provisions concerning the branding of services provided to CLEC by SBC MISSOURI under this Agreement are contained in the following Attachments and Appendices to this Agreement: Attachment 1: Resale; Appendix OS-Resale; Appendix DA-Resale; Attachment 2: Ordering & Provisioning-Resale; Attachment 3: Maintenance-Resale; Attachment 7: Ordering & Provisioning-Unbundled Network Elements; Attachment 8: Maintenance- Lawful Unbundled Network Elements; and 23: OS – Facilities Based, Lawful UNE and UNE-P.

## **54. END USER INQUIRIES**

- 54.1 Except as otherwise required by Section 20.1, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.
- 54.2 Except as otherwise required by Section 20.1, each Party will ensure that all of their representatives who receive inquiries regarding the other Party's services: (i) provide the numbers described in Section 57.1 to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party or its products or services.
- 54.3 Except as otherwise provided in this Agreement, CLEC shall be the primary point of contact for CLEC's End Users with respect to the services CLEC provides such End Users.
- 54.4 CLEC acknowledges that SBC MISSOURI may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement.



**55. DISCLAIMER OF WARRANTIES**

55.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, LAWFUL UNBUNDLED, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

**56. DEFINITIONS**

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

**57. RESALE**

57.1 At the request of CLEC, and pursuant to the requirements of the Act, any telecommunications service that SBC MISSOURI currently provides or hereafter offers to any End User in the geographic area where SBC MISSOURI is the incumbent LEC will be made available to CLEC by SBC MISSOURI for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

**58. LAWFUL UNBUNDLED NETWORK ELEMENTS**

58.1 At the request of CLEC and pursuant to the requirements of the Act, SBC MISSOURI will offer in the geographic area where SBC MISSOURI is the incumbent LEC, Lawful Unbundled Network Elements to CLEC on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific provisions concerning Lawful Unbundled Network Elements are addressed in Attachment 6: Lawful Unbundled Network Elements, and other applicable Attachments.

**59. ORDERING AND PROVISIONING, MAINTENANCE, CONNECTIVITY BILLING AND RECORDING, AND PROVISION OF END USER USAGE DATA**

59.1 In connection with its Resale of services to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of End User Usage Data services pursuant to the terms specified in Attachments 2, 3, 4 and 5, respectively.

59.2 In connection with its furnishing Lawful Unbundled Networks Elements to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and

Recording services and Provision of End User Usage Data services pursuant to the terms specified in Attachments 7, 8, 9 and 10, respectively.

**60. NETWORK INTERCONNECTION ARCHITECTURE**

60.1 Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SBC MISSOURI expressly recognizes that this provision and said Attachment are in no way intended to impair in any way CLEC's right to interconnect with Lawful unbundled Network Elements furnished by SBC MISSOURI at any technically feasible point within SBC MISSOURI's network, as provided in the Act.

**61. COMPENSATION FOR DELIVERY OF TRAFFIC**

61.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation.

**62. ANCILLARY FUNCTIONS**

62.1 Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SBC MISSOURI agrees to provide Ancillary Functions to CLEC as set forth in Attachment 13: Ancillary Functions.

**63. AMENDMENTS AND MODIFICATIONS**

63.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission; and such amendment will not require refunds, true-up or retroactive crediting or debiting prior to the approval of the Amendment. SBC MISSOURI and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

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

**64. ENTIRE AGREEMENT**

64.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

**65. SCOPE OF AGREEMENT**

- 65.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.
- 65.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

**66. OTHER REQUIREMENTS AND ATTACHMENTS**

- 66.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; Lawful Unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.
- 66.2 Appended to this Agreement and incorporated herein are the Attachments listed below. To the extent that any definitions, terms or conditions in any given Attachment differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment. In particular, if an Attachment contains a term length that differs from the term length in the main body of this Agreement, the term length of that Attachment will control the length of time that services or activities are to occur under the Attachment, but will not affect the term length of the remainder of this Agreement, except as may be necessary to interpret the Attachment.

THIS AGREEMENT CONTAINS ARBITRATED PROVISIONS AS DETERMINED BY THE MISSOURI PUBLIC SERVICE COMMISSION IN CASE NO. XXXX.

**CLEC**

**Southwestern Bell Telephone, L. P. d/b/a SBC Missouri By SBC Operations, Inc., Its authorized agent**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: AVP-Local Interconnection Marketing

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Facilities: OCN/AECN# \_\_\_\_\_

Resale: OCN/AECN# \_\_\_\_\_

**Intercarrier Compensation Option Choice:**

<b>Designate Choice with X</b>	<b>Option Number</b>	<b>Description</b>
	Option 1	Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic
	Option 2	All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate
	Option 3	Long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic

## ATTACHMENT 1: RESALE

All services made available to CLEC by SBC MISSOURI for resale pursuant to the Agreement (Resale services) will be subject to the terms and conditions set forth in the Agreement and in this Attachment 1: Resale, and in its appendices Services/Pricing, Customized Routing - Resale, DA - Resale, OS - Resale and White Pages - Resale, (collectively referred to as "Attachment Resale" or "this Attachment").

### 1. GENERAL REQUIREMENTS

- 1.1 At the request of CLEC, and pursuant to the requirements of the Act, any telecommunications service that SBC MISSOURI currently provides or hereafter provides at retail to subscribers who are not telecommunications carriers (including but not limited to the Resale services set forth in Appendix Services/Pricing attached hereto), will be made available to CLEC by SBC MISSOURI in accordance with the terms and conditions set forth in the Agreement and this Attachment 1: Resale.
- 1.1.1 The Parties agree that a LEC has the duty not to prohibit, and not to impose unreasonable or discriminatory condition or limitations on, the resale of its telecommunication service pursuant to 251(b)(1) of the Act.
- 1.2 SBC MISSOURI will apply an End User Common Line (EUCL) charge to each local exchange line resold under this agreement. All federal rules and regulations associated with EUCL charges, as found in Tariff FCC 73, also apply.
- 1.2.1 Consistent with Section 57.1 of the General Terms and Condition of this Agreement, SBC MISSOURI shall provide Resale Services under the following terms and conditions in this Appendix Resale.
- 1.3 SBC MISSOURI will make available to CLEC for resale Customer Service Contracts, Enhanced Directory Listings, Prepaid Calling Card, Joint User Services and all listed services contained in Pricing Schedule Except as otherwise expressed herein, SBC MISSOURI also will make available for resale to CLEC at the wholesale discount rate ordered by the State Commission any other Telecommunications Services offered by SBC MISSOURI and not listed in Pricing Schedule.
- 1.4 SBC MISSOURI will make available to CLEC for resale SBC MISSOURI's Bill Plus and Consolidated Billing service at a discount of five percent (5%) off of SBC MISSOURI's tariffed rate for each service (or in the event either of these services is not tariffed, at the rate SBC MISSOURI charges its subscribers).
- 1.5 SBC MISSOURI will make available to CLEC for resale the following SBC MISSOURI services at SBC MISSOURI's tariffed rate for each service (or in the event a service is not tariffed, at the rate SBC MISSOURI charges its subscribers, except as otherwise provided herein):
  - Construction Charges
  - Distance Learning
  - Maintenance of Service Charges
  - Suspension Services
  - Telecommunications Service Priority Systems
  - Access Services
  - Shared Tenant Service
- 1.5.1 Suspension of Service discounts apply to the discounted rate for the underlying service. When CLEC resells Shared Tenant Service, CLEC will receive the discount associated with the underlying service used in the shared tenant arrangement.
- 1.6 The following services are not being made available by SBC MISSOURI to CLEC for resale.
  - BDS/LAN
  - Customer Provided Equipment
  - Customized Billing Reports
  - Inline® Products
  - Inside Wiring

- Semi-Public Telephone Booths and Enclosures
  - 911 Universal Emergency Number Equipment
- 1.7 Telecommunications Services will be resold by SBC MISSOURI to CLEC on terms and conditions that are reasonable and nondiscriminatory.
- 1.8 Directory Assistance and Operator Services
- 1.8.1 Specific provisions, requirements and prices concerning Directory Assistance, Operator Services and related services are set forth in Appendix Directory Assistance/Operator Services, attached hereto.
- 1.9 Directory Listings Requirements
- 1.9.1 Specific provisions, requirements and prices concerning Directory Listings are set forth in Appendix White Pages (WP)-Resale, attached hereto.
- 1.10 Unless otherwise provided in this Agreement, SBC MISSOURI will perform all of its obligations hereunder throughout the entire service area where SBC MISSOURI is the incumbent local exchange carrier. SBC MISSOURI will provide the services covered by this Attachment subject to the availability of facilities in this state.
- 1.11 CLEC may at any time add or delete features to or relocate the Resale services for CLEC's end users except for grandfathered services. However, CLEC may only offer grandfathered services to customers that are eligible to receive grandfathered services from SBC MISSOURI.
- 1.12 The Parties will maintain restrictions on aggregation of toll service for resale. All other restrictions are presumed not to apply until the Parties identify and ask the Commission explicitly for imposition.
- 1.13 CLEC may terminate any Resale service within the period specified for termination of such Resale service in SBC MISSOURI's tariff applicable to that service, unless a different period is specified in this Attachment 1: Resale.
- 1.14 A CLEC shall make its telecommunications services available for resale to SBC MISSOURI on terms and conditions that are reasonable and nondiscriminatory.

## **2. BRANDING**

- 2.1 CLEC is free to brand the Resale services that SBC MISSOURI provides to CLEC under the provisions of this Agreement. SBC MISSOURI will not brand such Resale services provided to CLEC under this Agreement as being SBC MISSOURI's services, although certain SBC MISSOURI retail services that utilize electronic branding are subject to the further provisions of Section 2.1.1 below.
- 2.1.1 SBC MISSOURI offers certain retail services that utilize electronic branding to designate the services as SBC MISSOURI retail services. Subject to applicable law, to the extent such services are made available for resale to CLEC end users, CLEC may request SBC MISSOURI to rebrand such services as CLEC services or to offer them without a brand. SBC MISSOURI will review such requests in a timely manner and provide a cost estimate. CLEC agrees to reimburse SBC MISSOURI for its costs associated with the technical modifications necessary for such services to be unbranded or rebranded, including the costs to expedite the service availability to meet CLEC's needs. CLEC must accept the costs in writing before unbranding or rebranding technical modifications are performed and implemented. These branding and cost recovery provisions are applicable to services other than Directory Assistance and Operator Services offered by SBC MISSOURI as of the effective date of this Agreement. To the extent other LSPs subsequently utilize such unbranded services, SBC MISSOURI agrees to reimburse CLEC for a reasonable portion of its costs.
- 2.2 CLEC will provide the exclusive interface to CLEC end users in connection with the marketing, offering or provision of CLEC services, except as otherwise provided in this Agreement. In those instances where SBC MISSOURI personnel interface directly with CLEC end users in respect to installation, maintenance, and

repair services in connection with providing Resale services to CLEC, orally (either in person or by telephone) or in writing, such personnel will identify themselves as acting on behalf of CLEC.

- 2.3 Branding provisions concerning SBC MISSOURI's furnishing of all forms, business cards or other business materials to CLEC end users in connection with the ordering and provisioning and maintenance of Resale services provided for in this Agreement are contained in Attachments 2 and 3 of this Agreement.
- 2.4 CLEC will not, without SBC MISSOURI's written authorization, offer the Resale services covered by this Agreement using trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of SBC MISSOURI or its affiliates.

### **3. CHANGE OF LOCAL SERVICE PROVIDER**

- 3.1 With respect to the procedures to be used to change a local exchange service customer from SBC MISSOURI or another LSP to CLEC, SBC MISSOURI will charge CLEC a customer change charge of \$5.00.
- 3.2 If a CLEC end user customer adds features or services when the end user customer changes their resold local service from SBC MISSOURI or another LSP to CLEC, SBC MISSOURI will charge CLEC the Primary Local Exchange Carrier Selection Charge and any applicable wholesale non-recurring charges for the features and services added.
- 3.3 Intentionally Left Blank
- 3.4 Upon an end user's subscription to CLEC local Resale service, SBC MISSOURI will promptly remove from the LIDB any SBC MISSOURI assigned telephone line based calling card number (TLN) applicable to that end user.

### **4. PRICING**

- 4.1 Except as set forth in Appendices DA - Resale, OS - Resale, White Pages - Resale, and Customized Routing - Resale, the prices charged or discounts applied to CLEC for Resale service are set forth in Appendix Services/Pricing.
- 4.2 Promotion of Resale services of more than 90 days will be made available to CLEC on terms and conditions no less favorable than those SBC MISSOURI makes available to its customers and will be made available at the avoided cost discount from the promotional rate. Services offered for promotions of 90 days or less will be available for resale at the retail rate less the established avoided cost discount. (i.e., CLEC may not elect the promotional rate.)

### **5. NO RESTRICTIONS ON RESALE**

- 5.1 CLEC may resell Resale services to provide telecommunications services to any and all categories of subscribers, unless the Missouri commission determines otherwise as to a service obtained at wholesale rates. CLEC will not resell to business end users SBC MISSOURI's Resale services that are restricted by SBC MISSOURI's tariffs to use by residential subscribers. SBC MISSOURI is not required to make services available for resale at wholesale rates to CLEC for its own use. CLEC may only resell Lifeline Assistance, Link-Up, and other like services to similarly situated customers who are eligible for such services. Further, to the extent CLEC resells services that require certification on the part of the buyer, CLEC will ensure that the buyer has received proper certification and complies with all rules and regulations as established by the Commission. SBC MISSOURI will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Telecommunications Services.
- 5.2 CLEC will not use the Resale services covered by this Agreement to provide intrastate or interstate access services or to avoid intrastate or interstate access charges to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers. Provided however,

that CLEC may permits its end users to use resold Resale services to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.

## **6. DIALING PARITY**

- 6.1 For all call types associated with the Resale services provided to CLEC by SBC MISSOURI under this Agreement: (i) an CLEC Customer will not be required to dial any greater number of digits than a similarly-situated SBC MISSOURI customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality received by an CLEC end user will be at least equal in quality to that received by a similarly situated SBC MISSOURI customer; and (iii) the CLEC end user may retain its local telephone number provided the customer remains within the same wire center. End users of CLEC and end users of SBC MISSOURI will have the same exchange boundaries; such end users will be able to dial the same number of digits when making a "local" call and activating feature functionality.

## **7. MAINTENANCE**

- 7.1 Maintenance will be provided by SBC MISSOURI in accordance with the service parity requirements set forth in this Attachment 1: Resale and the requirements and standards set forth in Attachment 3: Maintenance-Resale.

## **8. CHANGES IN RETAIL SERVICE**

- 8.1 SBC MISSOURI will provide thirty (30) days advance notice before the tariff filing date of new products and services and changes to existing products and services, including the discontinuance of existing features or services, that are available for resale. SBC MISSOURI will provide a minimum of thirty (30) days notice before the tariff filing date of pricing changes for services that are available for resale.

## **9. BILLING FOR LOCAL SERVICE**

- 9.1 SBC MISSOURI will bill CLEC for Resale services provided by SBC MISSOURI to CLEC pursuant to the terms of this Attachment, and in accordance with the terms and conditions contained in Attachment 4: Connectivity Billing and Recording-Resale.
- 9.2 SBC MISSOURI will recognize CLEC as the customer of record for all Local Service and will send all notices, bills and other pertinent information directly to CLEC. CLEC is responsible for the payment of charges for all services furnished by reason of this Attachment.

## **10. OPERATIONAL REQUIREMENTS**

- 10.1 SBC MISSOURI will provide operational interfaces to CLEC for Resale services pursuant to the terms of this Attachment, and in accordance with the terms and conditions contained in Attachment 2: Ordering and Provisioning-Resale.
- 10.2 SBC MISSOURI will provide usage information to CLEC for Resale services pursuant to the terms of this Attachment, and in accordance with the terms and conditions contained in Attachment 5: Customer Usage Data-Resale.



## APPENDIX SERVICES/PRICING

1. This Appendix Services/Pricing describes several services which SBC MISSOURI will make available to CLEC for resale pursuant to the Agreement and Attachment 1: Resale. This list of services is neither all inclusive nor exclusive. All services or offerings of SBC MISSOURI which are required to be offered for resale pursuant to the Act are subject to the terms herein, even if not specifically enumerated or described in this Appendix.

### 2. PLEXAR® FAMILIES OF SERVICES REQUIREMENTS

2.1 CLEC may purchase the entire set PLEXAR families of services and features or a subset of any one or any combination of such features in conjunction with PLEXAR services. CENTREX is a Grandfathered Service and CLEC may only offer it to customers that are eligible to receive CENTREX from SBC MISSOURI. The PLEXAR families of services provided for resale will meet the following requirements:

2.1.1 All features and functions of PLEXAR families of services, whether offered under tariff or otherwise, will be available to CLEC for resale.

2.2 The Parties will maintain restrictions on aggregation of toll services for resale. All other restrictions are presumed not to apply until the Parties identify and ask the Commission explicitly for imposition.

2.3 CLEC may aggregate multiple CLEC Customers on dedicated access facilities. CLEC will pay the rates for DS-1 termination set forth herein for such service.

2.4 CLEC may be required to pay a charge, for the cost of suppressing the need for CLEC Customers to dial "9" when placing calls outside the PLEXAR families of services.

2.5 CLEC may use off-premises extensions in conjunction with the Private Line Services and PLEXAR families of services to provide service to CLEC Resale service customers having locations outside of the geographic territory in which SBC MISSOURI provides local exchange service as the incumbent LEC.

2.6 CLEC may purchase any and all levels of PLEXAR families of services (e.g., PLEXAR I, PLEXAR II, PLEXAR Custom, or PLEXAR Express) for resale.

2.7 SBC MISSOURI will furnish PLEXAR Custom services to CLEC for resale subject to Section 2.1.1 of this Appendix. SBC MISSOURI's provision of PLEXAR Custom will be as specified in this paragraph. SBC MISSOURI will offer CLEC the same price SBC MISSOURI provides to its Customers less costs that will be avoided. In addition, SBC MISSOURI will provide CLEC with the same technical and system design support that SBC MISSOURI makes available to SBC MISSOURI's PLEXAR Custom sales teams and agents. Such support will be provided by SBC MISSOURI to CLEC with the same quality and timelines that SBC MISSOURI provides to SBC MISSOURI's PLEXAR sales teams and agents. Access to appropriate training for PLEXAR Custom sales and sales support will be provided to CLEC by SBC MISSOURI at a reasonable price, mutually acceptable to SBC MISSOURI and CLEC.

### 3. CLASS AND CUSTOM FEATURES REQUIREMENTS

3.1 CLEC may purchase the entire set of CLASS and Custom features and functions, or a subset of any one or any combination of such features, including packages (e.g., "The Works"), without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service. CLEC may package any services so purchased for purposes of resale to its customers. SBC MISSOURI will provide to CLEC a list of all services and features. As requested by CLEC, SBC MISSOURI will provide a definition of these services and features and how they interact with each other to the extent such information is not otherwise publicly available. To the extent this information provided by SBC MISSOURI differs from the tariff, the tariff prevails. SBC MISSOURI will provide all features and services pursuant to the provisions of Attachment 2: Ordering and Provisioning.

#### **4. VOLUNTARY FEDERAL CUSTOMER FINANCIAL ASSISTANCE PROGRAMS**

- 4.1 Local Services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body, include programs such as Voluntary Federal Customer Financial Assistance Program and Link-Up America. When such SBC MISSOURI customers choose to obtain Resale service from CLEC, SBC MISSOURI will confirm such customers' eligibility to participate in such SBC MISSOURI programs to CLEC, in electronic format in accordance with the procedures set forth in Attachment 2: Ordering and Provisioning - Resale. CLEC is responsible for ensuring that its customers to whom it resells SBC MISSOURI's Voluntary Federal Customer Financial Assistance Programs services are eligible to receive same.

#### **5. E911/911 SERVICES**

- 5.1 Where available SBC MISSOURI will afford CLEC's customers with resold lines the ability to make 911 calls. CLEC will pay the appropriate PSAP applicable 911 surcharges (as defined by the appropriate Oversight Body) on resold lines. Where requested by SBC MISSOURI, CLEC will provide SBC MISSOURI with accurate and complete information regarding its customers in a format and time frame prescribed by SBC MISSOURI for purposes of 911 administration. SBC MISSOURI will provide to CLEC, for CLEC Customers, E911/911 call routing to the appropriate PSAP. SBC MISSOURI will make CLEC Customer information available to the appropriate PSAP. SBC MISSOURI shall use its service order process to update and maintain, on the same schedule that it uses for its Customers, the CLEC Customer service information in the ALI/DMS (Automatic Location Identification/Location Information Database) used to support E911/911 services.

#### **6. SERVICES TO DISABLED CUSTOMERS**

- 6.1 SBC MISSOURI agrees any services it offers to disabled customers will be made available to CLEC for its customers who qualify as disabled customers. When a SBC MISSOURI customer eligible for services offered to disabled customers chooses to obtain Resale services from CLEC, SBC MISSOURI will make all information regarding such customer's eligibility for disabled services available to CLEC, in electronic format in accordance with the procedures set forth in Attachment 2: Ordering and Provisioning - Resale. CLEC is responsible for ensuring that its customers to whom it resells SBC MISSOURI's disabled services are eligible to receive same.

#### **7. TELECOMMUNICATIONS RELAY SERVICE**

- 7.1 Where SBC MISSOURI provides to speech and hearing-impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad and message screen and to have a live operator read the message to a recipient and to type the message recipient's response to the speech or hearing-impaired caller ("Telecommunications Relay Service" or "TRS") SBC MISSOURI will make such service available to CLEC at no additional charge, for use by CLEC customers who are speech or hearing-impaired. If SBC MISSOURI maintains a record of customers who qualify under any applicable law for TRS, SBC MISSOURI will make such data available to CLEC as it pertains to CLEC Resale service customers.
- 7.2 Notwithstanding the provisions of Section 12.1 of the General Terms and Conditions portion of this Agreement, CLEC will apply the Deaf Relay Service and Equipment Distribution Program Fund surcharge to its local exchange subscribers as required under Section 209.255 R. S. Mo. and any other applicable law. CLEC will be solely responsible for billing and collecting the surcharge from its local exchange subscribers and remitting the surcharge directly to the appropriate taxing authority. Provided that CLEC fulfills its agreements as set forth in this Section, SBC MISSOURI will not apply the surcharge to CLEC for the services provided by SBC MISSOURI pursuant to this Attachment.

## **8. LIFELINE SERVICES**

- 8.1 "Lifeline Services" are Resale services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body. SBC MISSOURI agrees that any Lifeline Services it offers to customers will be available to CLEC for customers who meet such eligibility requirements.
- 8.2 When a SBC MISSOURI Lifeline Services customer chooses to obtain Resale service from CLEC, SBC MISSOURI will confirm such SBC MISSOURI customer's Lifeline Service eligibility to CLEC, in electronic format in accordance with the procedures set forth in Attachment 2: Ordering and Provisioning - Resale. CLEC is responsible for ensuring that its customers to whom it resells SBC MISSOURI's Lifeline Services are eligible to receive same.

## **9. ADVANCED INTELLIGENT NETWORK**

- 9.1 CLEC may purchase those Advanced Intelligent Network ("AIN") Telecommunication Services SBC MISSOURI offers at retail, under tariff or otherwise, to subscribers who are not telecommunications carriers.
- 9.2 All service levels, features and function components of AIN provided by SBC MISSOURI and offered for resale by CLEC will be provided by SBC MISSOURI at parity with the same services SBC MISSOURI offers to its own customers.
- 9.3 CLEC may purchase any and all levels of AIN service for Resale services, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service where technically feasible.

## **10. PAY PHONE SERVICES**

- 10.1 "Pay Phones" are defined as telephone sets which are available to the public for use in sending and/or receiving telephony services. These phones may be activated by depositing coins into said sets, or non-coin sets which limit the public's billing options to pay for telephony based services. SBC MISSOURI does not offer "pay phones" to any customers and will not offer "pay phones" to CLEC for resale.
- 10.2 "Pay Phone Service" is defined as the provision of pay phone lines, including the provision of pay phone lines to correctional institutions for inmate telephone service. Pay phone lines are defined as the loop from the pay phone instrument to the Serving Wire Center. Such lines may be attached to Customer Owned Pay Telephone Services or COPTS coin phones, COPTS coinless phones and semi-public phones. SBC MISSOURI currently offers two types of pay phone services: (1) Customer Owned Pay Telephone Services (COPTS), and (2) SmartCoin.
- 10.3 CLEC may purchase COPTS and SmartCoin service for purposes of Resale to an CLEC customer. SBC MISSOURI will provide to CLEC for resale the COPTS and SmartCoin services and associated services addressed in Section 10 of this Appendix Services/Pricing to Attachment 1: Resale, where offered by SBC MISSOURI.
- 10.4 PIC selection for COPTS and SmartCoin lines will be governed by Section 3.3 of Attachment 2: Ordering & Provisioning - Resale.
- 10.5 SBC MISSOURI will make available to CLEC any and all technology related to COPTS and SmartCoin services, unless expressly mandated otherwise by applicable Federal or State Regulatory rules. When such situations occur, SBC MISSOURI will work cooperatively with CLEC to establish a mutually agreeable solution of such ruling.
- 10.6 With COPTS and SmartCoin services, SBC MISSOURI will provide CLEC through SBC MISSOURI's applicable tariffs all appropriate screening functions and features to minimize fraud potential.
- 10.7 SBC MISSOURI will provide CLEC all appropriate functions and features offered to SBC MISSOURI's customers to allow CLEC Customers of COPTS and SmartCoin services to employ restrictive billing and call-blocking. An example of such a feature is Selective Class of Call Screening.

10.8 SBC MISSOURI will provide CLEC all options related to COPTS and SmartCoin it provides to SBC MISSOURI's own subscribers of such services.

10.9 SBC MISSOURI will forward all local coin calls originated from CLEC COPT coin, COPT coinless and semi-public lines to the designated CLEC line or trunk group for handling.

## **11. CALL TRACE**

11.1 CLEC end user's activation of Call Trace shall be handled by the SBC MISSOURI Call Trace Center (CTC). SBC MISSOURI shall notify CLEC of requests by its end users to provide the call records to the proper authorities. Subsequent communications and resolution of the case with CLEC's end users (whether that end user is the victim or the suspect) will be coordinated through CLEC.

11.2 CLEC understands that for services where reports are provided to law enforcement agencies (e.g., Call Trace) only billing number and address information will be provided. It will be CLEC's responsibility to provide additional information necessary for any police investigation. CLEC will indemnify SBC MISSOURI against any claims that insufficient information led to inadequate prosecution.

## **12. SUSPENSION SERVICES**

12.1 CLEC may offer to resell Customer Initiated Suspension and Restoral Service to their customers. CLEC may also provide a Company Initiated Suspension service for their own purposes. Should CLEC choose to suspend their end user through Company Initiated Suspension Service, this suspension period shall not exceed fifteen (15) calendar days. If CLEC issues a disconnect on their end user account within the fifteen (15) day period, appropriate services will not be billed for the suspension period. However, should CLEC issue a disconnect after the fifteen (15) day suspension period, CLEC will be responsible for all appropriate charge on the account back to the suspension date. Should CLEC restore their end user, a Service Connection Charge for Restoral of Service will apply and CLEC will be billed for the appropriate service from the time of suspension.

## **13. PAYMENTS OF RATES & CHARGES FROM A THIRD PARTY**

13.1 Interexchange carried traffic (e.g., sent-paid, information services and alternate operator services messages) received by SBC MISSOURI for billing to resold end-user accounts will be returned as unbillable and will not be passed on to CLEC for billing. An unbillable code returned with those messages to the carrier will indicate that the messages originated from a resold account and will not be billed by SBC MISSOURI.

## **14. SERVICES AVAILABLE FOR RESALE AND ASSOCIATED PRICES**

14.1 Attached is Exhibit A, "List of SBC MISSOURI's Telecommunications Services Available for Resale", which is a matrix that lists the services offered by SBC MISSOURI which will be made available to CLEC for resale. CLEC may purchase these services at a 19.2% discount from SBC MISSOURI's retail prices for all services except operator services. The wholesale discount of 13.91% applies to operator services only. Also attached is Exhibit B, "List of SBC MISSOURI's Other Services Available for Resale", which is a matrix that lists services offered by SBC MISSOURI which will be made available to CLEC at retail prices. Any rate element incorrectly included in or omitted from either matrix will be corrected as appropriate.

## APPENDIX CUSTOMIZED ROUTING-RESALE

This Appendix to Attachment 1: Resale contains provisions concerning customized routing of Directory Assistance, Operator Services and related Resale services.

### 1. CUSTOMIZED ROUTING OF CLEC DIRECTORY ASSISTANCE AND OPERATOR SERVICES

- 1.1 Where CLEC purchases Resale services, and elects to provide Directory Assistance and Operator Services to its Customers through its own Directory Assistance and Operator Services platforms, SBC MISSOURI will provide the functionality and features required to route all calls from CLEC Customers for Directory Assistance and Operator Services calls (1+411, 0+411, 0- and 0+ Local) to the CLEC designated trunks for the provision of CLEC Directory Assistance and Operator Services, in accordance with Section 1.2 of this Appendix.
- 1.2 Customized routing of Directory Assistance and Operator Services on those SBC MISSOURI switches with existing capabilities and capacity (e.g., by utilizing line class code or similar method) will be provided starting March 1, 1997, and implementation will be completed on all such switches by June 30, 1997. For those switches that lack the existing capability and/or capacity to support customized routing, SBC MISSOURI will develop alternative method(s) (e.g., AIN based method) of providing customized routing of Directory Assistance and Operator Services. SBC MISSOURI will complete implementation of said alternative method(s) by December 31, 1997. The schedule for development of alternative method(s) is dependent upon the ability of SBC MISSOURI's vendor to meet its current commitment; however, SBC MISSOURI will use its best efforts to manage the vendor to meet said date.
- 1.3 SBC MISSOURI is free to choose the methodology deployed in SBC MISSOURI's network to perform customized routing of Directory Assistance and Operator Services.
- 1.4 SBC MISSOURI will make available to CLEC the ability to route Directory Assistance and Operator Services calls dialed by CLEC Customers directly to the CLEC Directory Assistance and Operator Services platform.
- 1.5 SBC MISSOURI will provide the functionality and features within its local circuit switch (LS) providing the resold local service to route CLEC customer-dialed Directory Assistance local calls to CLEC designated trunks via Feature Group C signaling or as the Parties may otherwise agree, for direct-dialed calls (e.g., sent paid).
- 1.6 SBC MISSOURI will provide the functionality and features within its LS to route CLEC customer dialed 0/0+ local and IntraLATA calls to the CLEC designated trunks via Feature Group C signaling.
- 1.7 The Parties agree that, in the event of an emergency wherein an CLEC customer must reach a non-CLEC customer that has a non-published telephone number, the CLEC operator will contact SBC MISSOURI's operator and request the assistance of a supervisor as is done by SBC MISSOURI's operators.
- 1.8 SBC MISSOURI will provide the functionality and features within its LS providing the resold local service to route CLEC customer dialed 0- and 0+ local calls to the CLEC designated trunks via Modified Operator Signaling Services (MOSS) Feature Group C signaling. In all cases, SBC MISSOURI will provide post-dial delay at least equal to that provided by SBC MISSOURI for its end user Customers.
- 1.9 SBC MISSOURI will forward with all Directory Assistance and Operator Services calls from CLEC Customers all appropriate line data required by CLEC to identify the type of line. Such data shall include, but not be limited to, originating line number, 10 digits, line class code, and any other data elements required to allow CLEC to appropriately identify the originating line for purposes of call handling and recording.
- 1.10 All direct routing capabilities described herein will permit CLEC Customers to dial the same telephone numbers for CLEC Directory Assistance and Operator Services that similarly-situated SBC MISSOURI Customers dial for reaching equivalent SBC MISSOURI services.
- 1.11 The prices, terms and conditions for the provision of customized routing are contained Attachment 6: Unbundled Network Elements.

## APPENDIX DA-RESALE

### SBC MISSOURI-PROVIDED DIRECTORY ASSISTANCE SERVICE

This Appendix DA-Resale to Attachment 1: Resale sets forth the terms and conditions under which SBC MISSOURI agrees to provide Directory Assistance Service (DA Service) for CLEC, but only upon CLEC's request therefor.

#### 1. SERVICE

- 1.1 DA Service consists of providing subscriber listing information (name, address, and published or Non-List telephone number or an indication of non-published status) to CLEC's customers who call DA according to current SBC MISSOURI methods and practices or as subsequently modified.
- 1.2 Directory Assistance Call Completion (DACC) service consists of SBC MISSOURI completing a call to the requested number on behalf of CLEC's end user, utilizing the Interactive Voice System (IVS) or having the operator complete the call. SBC MISSOURI will provide DACC to CLEC's customers for local and intrastate intraLATA calls. In the event and to the extent that SBC MISSOURI provides DACC service to its own customers for interstate intraLATA calls, it will provide such service to CLEC's customers.
- 1.3 SBC MISSOURI agrees to provide DACC only in areas where SBC MISSOURI can furnish Automatic Number Identification (ANI) from CLEC's customers to SBC MISSOURI's switch and where CLEC obtains DA service from SBC MISSOURI.
- 1.4 The Parties agree that, in the event of an emergency wherein an CLEC customer must reach a non-CLEC customer that has a non-published telephone number, the CLEC operator will contact SBC MISSOURI's operator and request the assistance of a supervisor to the extent done by SBC MISSOURI's operators.

#### 2. DEFINITIONS - THE FOLLOWING TERMS ARE DEFINED AS SET FORTH BELOW:

- 2.1 **Directory Assistance Services** - SBC MISSOURI will provide the following DA Services:
  - 2.1.1 **Local Directory Assistance** - Consists of providing published name, address and telephone number to the dialing end user.
  - 2.1.2 **Directory Assistance Call Completion (DACC)** - [Sometimes also known as "Express Call Completion" (ECC)]. A service in which a local or an intraLATA call to the requested number is completed on behalf of the DA end user, utilizing an automated voice system or with operator assistance.
  - 2.1.3 **National Directory Assistance (NDA)** - A service whereby callers may request directory assistance information outside their LATA or Home NPA for a listed telephone number for residential, business and government accounts throughout the 50 states.
  - 2.1.4 **Reverse Directory Assistance (RDA)** - An Information Service consisting of providing listed local and national name and address information associated with a telephone number provided by the individual originating the call from a LWCAL.
  - 2.1.5 **Business Category Search (BCS)** - A service in which the end user may request business telephone number listings for a specified category of business, when the name of the business is not known. Telephone numbers may be requested for local and national businesses.
  - 2.1.6 **Emergency Nonpub Number Request** - A service in which, in the event of an emergency request by a calling party, a Directory Assistance Operator will attempt to reach a nonpublished end user with the calling party's name and number, and a short message about the nature of the emergency, without releasing the nonpublished end user's telephone number to the calling party.
- 2.2 **Non-List Number** - A Telephone number that, at the request of the telephone subscriber, is not published in a telephone directory, but is available by calling a SBC MISSOURI DA Operator.

- 2.3 **Non-Published Number** - A telephone number that, at the request of the telephone subscriber, is neither published in a telephone directory nor provided by a SBC MISSOURI DA Operator.
- 2.4 **Published Number** - A telephone number that is published in a telephone directory and is available upon request by calling a SBC MISSOURI DA Operator.
- 2.5 **IntraLATA Home NPA (HNPA)** - Where a LATA is comprised of one area code or Numbering Plan Area (NPA).
- 2.6 **IntraLATA Foreign NPA (FNPA)** - Where a single LATA includes two Numbering Plan Areas (NPAs). FNPA DA calls may be classified as interstate intraLATA or intrastate intraLATA DA calls.

### 3. CALL BRANDING/RATE REFERENCE

#### 3.1 Call Branding

- 3.1.1 The process by which an Operator, either live or recorded, will identify the DA provider as being CLEC. SBC MISSOURI will offer Call Branding of DA in the name of CLEC or load a silent brand if requested.
- 3.1.2 CLEC will provide SBC MISSOURI with the specific branding phrase to be used to identify CLEC. The standard phrase will be consistent with the general form and content currently used by the Parties in branding their respective services. An initial non-recurring charge will apply for loading CLEC's branding information as well as a charge for each subsequent change to CLEC's branding information as provided in appendix Pricing Schedule.
- 3.1.3 SBC MISSOURI will brand Directory Assistance in the name of CLEC starting not later than thirty (30) days after the Effective Date of the Agreement and will complete implementation of this process in all SBC MISSOURI Directory Assistance platforms not later than five (5) months after the Effective Date of the Agreement. In the interim, SBC MISSOURI will, if allowed by federal and state law and regulatory rules, unbrand competitive LEC directory assistance calls that are branded by live operators. CLEC will not request interim unbranding of Directory Assistance for calls that are branded by automated systems until such time as SBC MISSOURI's operator services platforms are capable of re-branding. The schedule is dependent upon the ability of SBC MISSOURI's vendor to meet its current commitment; however, SBC MISSOURI will use its best efforts to manage the vendor to meet said date.
- 3.1.4 An initial non-recurring charge will apply for loading CLEC's Directory Assistance Call Branding Announcement as well as a charge for each subsequent change to CLEC's Directory Assistance Call Branding Announcement as provided in Section 5.0 Pricing of Appendix DA-Resale.

#### 3.2 Rate Reference

- 3.2.1 SBC MISSOURI Directory Assistance operators will provide Directory Assistance Rate Information upon request to CLEC's end users as required by Section 226(b)(1)(C) of the Act. Rate Reference information will be provided under the following terms and conditions:
- 3.2.2 CLEC will furnish Rate Reference information in a mutually agreed to format or media thirty (30) days in advance of the initial date when they are to be provided by SBC MISSOURI. If CLEC does not provide the Rate information and branding phrase as required in this Section, SBC MISSOURI will brand the DA service provided to CLEC as SBC MISSOURI DA service and quote SBC MISSOURI rates. SBC MISSOURI will no longer brand these calls as SBC MISSOURI calls nor quote SBC MISSOURI rates when the appropriate equipment or software is installed.
- 3.2.3 CLEC will inform SBC MISSOURI, in writing, of any changes to be made to such Rate Reference Information ten (10) working days prior to the effective rate change date. CLEC acknowledges that it is responsible to provide SBC MISSOURI updated Rate information in advance of when the Rates are to become effective.
- 3.2.4 In all cases when SBC MISSOURI receives a rate request from an CLEC end user, SBC MISSOURI will quote the Directory Assistance rates provided by CLEC, except as provided in section 3.2.2.

- 3.2.5 An initial non-recurring charge will apply for loading CLEC's Directory Assistance Rate information as well as a charge for each subsequent change to CLEC's Directory Assistance Reference information as provided in Section 5.0 Pricing of Appendix DA-Resale.

#### **4. RESPONSIBILITIES OF SBC MISSOURI**

- 4.1 SBC MISSOURI will perform DA Service for CLEC in those exchanges where CLEC elects to purchase such services from SBC MISSOURI.
- 4.2 SBC MISSOURI will provide and maintain its own equipment to furnish DA Services, including equipment necessary for routing calls and signals to the SBC MISSOURI serving office.
- 4.3 SBC MISSOURI will provide DA Service to CLEC customers using current and updated DA records and in accordance with SBC MISSOURI's current methods, practices, and procedures or as subsequently modified.
- 4.4 SBC MISSOURI will provide IntraLATA HNPA DA Service and intrastate IntraLATA FNPA DA Service to Customers who dial 1+411 or NPA+555-1212.
- 4.5 SBC MISSOURI will include current CLEC customer listing information in SBC MISSOURI's DA database.

#### **5. PRICING**

- 5.1 Rates to be charged to CLEC by SBC MISSOURI for the DA Services provided pursuant to this Appendix are set forth in the Pricing Schedule of this Agreement. In states where SBC MISSOURI affords customers making calls to DA a monthly free call allowance, SBC MISSOURI will afford CLEC's customers making calls to DA the same monthly free call allowance, and will not charge CLEC for such calls.

#### **6. LIABILITY**

- 6.1 Indemnification and limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of the Agreement.



## APPENDIX OS-RESALE

### SBC MISSOURI-PROVIDED LOCAL & INTRALATA OPERATOR ASSISTANCE SERVICES

This Appendix OS-Resale to Attachment 1: Resale sets forth the terms and conditions under which SBC MISSOURI agrees to provide local and intraLATA operator services (Operator Services or OS) for CLEC, but only upon CLEC's request therefore. This Appendix applies only to operator assistance services provided within a LATA.

#### 1. SBC MISSOURI WILL PROVIDE THE FOLLOWING THREE TIERS OF OPERATOR SERVICES

- 1.1 Fully-Automated - Allows the caller to complete a call utilizing Automated Alternate Billing Service (AABS) equipment without the assistance of a SBC MISSOURI Operator, hereafter called Operator. AABS allows the caller the option of completing calls through the AABS audio response system. AABS will be offered in areas where facilities exist and where SBC MISSOURI has Automatic Number Identification (ANI) equipment and TOUCH-TONE service in place. AABS cannot be activated from a rotary telephone and failure or slow response by the caller to the audio prompts will bridge an Operator to the caller for further assistance. The called party must also have TOUCH-TONE service to accept calls that are billed collect or to a third number.
- 1.2 Semi-Automated - Allows the caller to complete a call by receiving partial assistance from an Operator or when AABS cannot be activated due to equipment limitations.
- 1.3 Non-Automated - Allows the caller to complete a call by receiving full assistance from an Operator.

#### 2. SBC MISSOURI WILL PROVIDE TO CLEC THE CALL TYPES IN SECTIONS 3.0 THROUGH 8.0 BELOW

#### 3. FULLY AUTOMATED STATION-TO-STATION

This service is limited to those calls placed collect or billed to a third number. The caller dials 0 plus the telephone number desired, the service selection codes and/or billing information as instructed by the AABS equipment. The call is completed without the assistance of an Operator. This service may also include the following situations:

- 3.1 The caller identifies himself or herself as disabled and gives the Operator the number to which the call is to be billed (either collect or third number).
- 3.2 When due to trouble on the network or lack of service components, the automated call cannot be completed without assistance from an Operator.
- 3.3 When an Operator reestablishes an interrupted call that meets any of the situations described in this Section.

#### 4. SEMI-AUTOMATED STATION-TO-STATION

This service is limited to those calls placed sent paid, collect or billed to a third number. The caller dials 0 plus the telephone number desired and the call is completed with the assistance of an Operator. This service may also include the following situations:

- 4.1 Where the caller does not dial 0 prior to calling the number desired from a public or semi-public telephone, or from a telephone where the call is routed directly to an Operator (excluding calling card calls).
- 4.2 When an Operator re-establishes an interrupted call that meets any of the situations described in this Section.

## **5. SEMI-AUTOMATED PERSON-TO PERSON**

A service in which the caller dials 0 plus the telephone number desired and specifies to the Operator the particular person to be reached or a particular PBX station, department or office to be reached through a PBX attendant. This service applies even if the caller agrees, after the connection is established, to speak to any party other than the party previously specified. This service may also include:

- 5.1 Where the caller does not dial a 0 prior to dialing the number from a public or semi-public telephone, or where the call is routed directly to an Operator.
- 5.2 When an operator reestablishes an interrupted call that meets any of the situations described in this Section.

## **6. OPERATOR HANDLED STATION-TO-STATION**

A service provided when the caller dials 0 to reach an Operator, and the Operator dials a sent paid, collect or third number station-to-station call. These calls may originate from a private, public or semi-public telephone. The service may also include when an Operator reestablishes an interrupted call as described in this Section.

## **7. OPERATOR HANDLED PERSON-TO-PERSON**

A service in which the caller dials 0 and requests the Operator to dial the number desired and the person, station, department or office to be reached. The call remains a person-to-person call even if the caller agrees, after the connection is established, to speak to any party other than the party previously specified. The service may also include when an Operator reestablishes an interrupted call as described in this Section.

## **8. OPERATOR TRANSFER SERVICE**

A service in which the caller dials 0 and requests to be connected to an interexchange carrier using an Operator's assistance. At the caller's request, the Operator transfers the call to an interexchange carrier participating in SBC MISSOURI's Operator Transfer service offering. CLEC agrees to obtain all necessary compensation arrangements between CLEC and participating carriers.

## **9. CALL BRANDING/RATE REFERENCE**

### **9.1 Call Branding**

9.1.1 The process by which an Operator, either live or recorded, will identify the operator service provider as being CLEC's. SBC MISSOURI will offer Call Branding of Operator Services in the name of CLEC.

9.1.2 CLEC will provide SBC MISSOURI with the specific branding phrase to be used to identify CLEC. The standard phrase will be consistent with the general form and content currently used by the Parties in branding their respective services. An initial non-recurring charge will apply for loading CLEC's branding information as well as a charge for each subsequent change to CLEC's branding information as provided in appendix Pricing Schedule.

9.1.3 SBC MISSOURI will brand Operator Services in the name of CLEC starting not later than thirty (30) days after the Effective Date of the Agreement and will complete implementation of this process in all SBC MISSOURI Operator Assistance platforms not later than five (5) months after the Effective Date of the Agreement. In the interim, SBC MISSOURI will, if allowed by federal and state law and regulatory rules, unbrand competitive LEC operator services calls that are branded by live operators. CLEC will not request interim unbranding of Operator Services for calls that are branded by automated systems until such time as SBC MISSOURI's operator services platforms are capable of re-branding. The schedule is dependent upon the ability of SBC MISSOURI's vendor to meet its current commitment; however, SBC MISSOURI will use its best efforts to manage the vendor to meet said date.

- 9.1.4 An initial non-recurring charge will apply for loading CLEC's Operator Services Call Branding Announcement as well as a charge for each subsequent change to CLEC's Operator Services Call Branding Announcement as provided in Section 13.0 Pricing of Appendix OS-Resale.
- 9.2 Rate Reference
- 9.2.1 SBC MISSOURI Operator Services operators will provide Operator Services Rate Information upon request to CLEC's end users as required by Section 226(b)(1)(C) of the Act. Rate Reference information will be provided under the following terms and conditions:
- 9.2.2 CLEC will furnish Rate Reference information in a mutually agreed to format or media thirty (30) days in advance of the initial date when they are to be provided by SBC MISSOURI. If CLEC does not provide the Rate information and branding phrase as required in this Section, SBC MISSOURI will brand the OS service provided to CLEC as SBC MISSOURI OS service and quote SBC MISSOURI rates. SBC MISSOURI will no longer brand these calls as SBC MISSOURI calls nor quote SBC MISSOURI rates when the appropriate equipment or software is installed.
- 9.2.3 CLEC will inform SBC MISSOURI, in writing, of any changes to be made to such Rate Reference Information ten (10) working days prior to the effective rate change date. CLEC acknowledges that it is responsible to provide SBC MISSOURI updated Rate information in advance of when the Rates are to become effective.
- 9.2.4 In all cases when SBC MISSOURI receives a rate request from an CLEC end user, SBC MISSOURI will quote the Operator Services rates provided by CLEC, except as provided in 9.2.2.
- 9.2.5 An initial non-recurring charge will apply for loading CLEC's Operator Services Rate information as well as a charge for each subsequent change to CLEC's Operator Services Reference information as provided in the Pricing Schedule of the Agreement.

## **10. OTHER OPERATOR ASSISTANCE SERVICES**

- 10.1 Line Status Verification - A service in which the caller asks the Operator to determine the busy status of an access line.
- 10.2 Busy Line Interrupt - A service in which the caller asks the Operator to interrupt a conversation in progress, to determine if one of the parties is willing to speak to the caller requesting the interrupt. A Busy Line Interrupt charge will apply even if no conversation is in progress at the time of interrupt or the parties interrupted refuse to terminate the conversation in progress.
- 10.3 Handling of Emergency Calls to Operator - SBC MISSOURI agrees to process emergency calls from CLEC Resale customers to an Operator in the same manner that SBC MISSOURI processes the same type of call for a SBC MISSOURI end user customer.
- 10.4 Calling Card - Calls billed to an CLEC proprietary calling card (0+ or 0- access) will be routed via transfer to the CLEC operator.

## **11. RESPONSIBILITIES OF THE PARTIES**

- 11.1 SBC MISSOURI will provide and maintain such equipment as is required to furnish the Operator Services as described in this Appendix.
- 11.2 Facilities necessary for SBC MISSOURI to provide Operator Services to CLEC will be provided by SBC MISSOURI using standard trunk traffic engineering procedures to ensure that the objective grade of service is met.
- 11.3 CLEC will furnish all records required by SBC MISSOURI to provide the Operator Services. Such records, or information, will include CLEC's rate quotation tables and any other information required by SBC MISSOURI. CLEC will provide the initial data by a date mutually agreed to between CLEC and SBC

MISSOURI. CLEC will keep this data current using procedures mutually agreed to by CLEC and SBC MISSOURI. CLEC will provide all data and changes to SBC MISSOURI in the mutually agreed to format(s).

- 11.4 SBC MISSOURI will accumulate and provide to CLEC data as specified in Attachments 4: Connectivity Billing-Resale and Attachment 5: Customer Usage Data-Resale to this Agreement necessary for CLEC to verify traffic volumes and bill its end users.

## **12. METHODS AND PRACTICES**

- 12.1 SBC MISSOURI will provide Operator Services in accordance with the operator methods and practices in effect for SBC MISSOURI at the time the call is made, unless otherwise agreed in writing by both Parties.

## **13. PRICING**

- 13.1 Rates to be charged to CLEC by SBC MISSOURI for the Operator Services provided pursuant to this Appendix are set forth in Pricing Schedule of this agreement.

## **14. LIABILITY**

- 14.1 Indemnification and limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of the Agreement.

## APPENDIX WHITE PAGES (WP) - RESALE

This Appendix White Pages - Resale (WP-Resale) to Attachment 1: Resale, sets forth SBC MISSOURI's and CLEC's agreement to the following terms and conditions for the inclusion of CLEC Customer information associated with Resale services in the White Pages directories:

### 1. INTRODUCTION

- 1.1 SBC MISSOURI publishes White Pages directories for geographic local service areas in which CLEC also provides local exchange telephone service in the same area(s), and CLEC wishes to include listings information for its customers in the appropriate SBC MISSOURI White Pages directories.
- 1.2 CLEC also desires distribution to CLEC's customers of the White Pages directories that include listings of such customers.
- 1.3 SBC MISSOURI will make available to CLEC, for these CLEC customers, non-discriminatory access to White Pages directory listings (Directory Listings), as described in Section 2 of this Attachment.

### 2. SERVICE PROVIDED

- 2.1 SBC MISSOURI will use the practices and procedures and the rules and regulations applicable to its provision of White Pages directories on a nondiscriminatory basis. SBC MISSOURI will include in appropriate White Pages directories the primary alphabetical listings of all CLEC customers (other than non-published or non-list Customers) located within the local directory area. The rules, regulations and SBC MISSOURI's practices are subject to change from time to time. When CLEC provides its subscriber listing information to SBC MISSOURI's listings database, CLEC will receive for its End User, one primary listing in SBC MISSOURI's White Pages directory and a listing in SBC MISSOURI's directory assistance database.
- 2.2 CLEC will furnish to SBC MISSOURI subscriber listing information pertaining to CLEC customers located within the SBC MISSOURI local directory area, along with such additional information as SBC MISSOURI may require to prepare and print the alphabetical listings of said directory. SBC MISSOURI will accept listing information from CLEC according to the manual and mechanized listing methods, procedures and ordering instructions provided via the CLEC Online website. CLEC agrees to submit all listing information via only a mechanized process within six (6) months of the effective date of this Attachment, or upon CLEC reaching a volume of two hundred (200) listing updates per day, whichever comes first. CLEC will submit changes to listing information within one (1) Business Day of the effective date of the change (including change of non-listed or non-published status) affecting the Directory Assistance database or the directory listing of a CLEC End User. Both parties will use commercially reasonable efforts to ensure the accuracy of the submission and processing of the listing updates. CLEC must submit all listing information intended for publication by the directory close date.
- 2.3 SBC MISSOURI will include the listing information for CLEC's customers for Resale services in SBC MISSOURI's White Pages directory data base in the same manner as it includes listing information for SBC MISSOURI's end user customers.
- 2.4 SBC MISSOURI will provide, via the SBC CLEC Online web site, the directory listing criteria, methods, procedures and ordering information to CLEC for White Pages listings and will provide changes to such criteria not later than thirty (30) days in advance of such changes becoming effective. This information will include, but not be limited to:
  - 2.4.1 Business rules for standard White Pages listings (e.g., space restrictions, non-listed and non-published listings, abbreviated listings, secondary, additional and foreign listings);
  - 2.4.2 Business rules for residential Enhanced White Pages (e.g., bold, indent, italics) listings available.
- 2.5 CLEC may purchase unpublished, unlisted, foreign, enhanced or other listings in addition to the primary listing on a per listing basis and will pay SBC MISSOURI amounts attributable to such listings used by its

- customers in accordance with the terms of Appendix Services/Prices to Attachment 1: Resale to the Agreement.
- 2.6 CLEC can access via the SBC CLEC Online website, the directory close dates for areas where CLEC is providing local service. SBC MISSOURI will provide directory schedule updates, including the directory schedule for a new calendar year, not later than thirty (30) calendar days prior such changes becoming effective.
  - 2.7 CLEC's subscriber listings are to be interfiled (interspersed) with SBC MISSOURI's and other LSP's subscriber listings in the White Pages directory with no discernible differentiation in the listings to indicate to the reader that the listings are served by another LSP.
  - 2.8 SBC MISSOURI will deliver White Pages directory to CLEC's End Users at no charge in the same manner and at the same time that they are delivered to SBC MISSOURI's subscribers during the annual delivery of newly published directories.
  - 2.9 SBC MISSOURI has no obligation to warehouse White Pages directories for CLEC or provide White Pages directories to CLEC's End Users subsequent to the annual distribution of newly published directories. CLEC may arrange for additional directory distribution services with SBC MISSOURI's directory publishing affiliate, pursuant to terms and conditions agreed to by the publisher and CLEC.
  - 2.10 At its option, CLEC may purchase one (1) information pages (Customer Guide Pages) in the informational section of the SBC MISSOURI White Pages directory covering the geographic area(s) it is serving. This pages will be in alphabetical order with other local service providers and will be no different in style, size, color and format than SBC MISSOURI information pages. CLEC will provide to SBC MISSOURI, sixty (60) days prior to the directory close date, the information page(s) in camera ready format. SBC MISSOURI will have the right to approve, and, with CLEC's agreement, SBC MISSOURI may, but is not required to, revise the format and content of such information page(s). See Appendix Pricing, Schedule of Prices, for rates associated with the Information Page.
  - 2.11 SBC MISSOURI will include CLEC specific information (i.e., business office, residence office, repair bureau, etc.) in the White Pages directory on an "index-type" information page, in alphabetical order along with other local service providers, at no charge. The space available to CLEC on such page will be 1/8<sup>th</sup> page in size or the equivalent size as other local service providers listed on the same page. In order to have such information published sixty (60) calendar days prior to directory close date, CLEC will provide SBC MISSOURI the information to be published on the information page according to the instructions provided on SBC CLEC Online website (CLEC will be limited to a maximum of one representation in any single edition of a SBC MISSOURI White Pages directory, under either this Subsection or Attachment 19: White Pages-Other to this Agreement).
  - 2.12 SBC MISSOURI will provide electronic directory listing verification to CLEC through the Web Listing Lookup on the SBC CLEC Online website. Upon request, SBC MISSOURI will provide daily electronic directory listing verification via SBC MISSOURI's White Page listing systems. Information for directory listing verification is located on the SBC CLEC Online website.
  - 2.13 In addition, at least sixty (60) calendar days prior to the business office close date for a particular directory, SBC MISSOURI will provide CLEC, upon request, an electronic verification report, in directory appearance format, of all subscriber listings, containing the listing information that will appear in the directory. CLEC will make its request for this report at least eighty (80) days prior to the Business Office Close Date for a particular directory. SBC MISSOURI will accept standing requests for this report—on those White Page directories specified by CLEC.
  - 2.14 A CLEC specific directory listing verification list, in a fielded data validation format, also is available upon request by the CLEC at least eighty (80) days prior to the Business Office Close Date for a particular directory CLEC will review this electronic verification list and will submit any necessary additions, deletions or modifications to SBC MISSOURI via the appropriate directory listing correction process no less than thirty

(30) days prior to the SBC MISSOURI Business Office Close date for that directory, provided that SBC MISSOURI made the electronic verification list available to CLEC in a timely manner as specified above.

### **3. USE OF SUBSCRIBER LISTING INFORMATION**

- 3.1 Subscriber listing information for Resale services, maintained in SBC MISSOURI's White Page database including listings of CLEC Customers, may be provided to Third Parties on the same terms and conditions and at the same rates that SBC MISSOURI provides its own subscriber list information to third parties. CLEC will receive its pro-rata share of any amounts paid by Third Parties to SBC MISSOURI for such subscriber list information. CLEC's pro-rata share will be calculated based on the proportionate share of CLEC customers to the total number of customers included in the subscriber list information. Provision of subscriber list information to Third Parties will be solely at SBC MISSOURI's discretion.

## ATTACHMENT 2: ORDERING AND PROVISIONING - RESALE

### 1. GENERAL REQUIREMENTS

Except as provided in Attachment 27: Operation Support System (OSS) SBC MISSOURI will provide for manual pre-order, ordering and provisioning services for manually submitted orders, conversion orders and/or manual migration orders associated with SBC MISSOURI's Resale services under the Agreement pursuant to the requirements set forth in this Attachment.

- 1.1 For all Resale services ordered and submitted manually under the Agreement, SBC MISSOURI will provide pre-order, ordering and provisioning services in to the services SBC MISSOURI provides to its End Users.
- 1.2 SBC MISSOURI agrees to provide, the pre-service ordering information (i.e., address verification, telephone number assignment, and Customer Service Record information (CSR) in English, USOC and FID format subject to the most current version of the Local Service Pre-Ordering Requirements (SBC MISSOURI's LSPOR) and the terms and conditions as set forth in Attachment Resale.
- 1.3 Pre-order, Ordering and Provisioning requests for Manual Migration and/or Conversion of Resale Services provided by SBC MISSOURI to the CLEC, where the CLEC is not utilizing an electronic OSS interface, will be transmitted via facsimile to the CLEC's Local Service Center (LSC). In coordinating conversions or migrations, each Party's LSC will respond to the other Party's calls with the same level of service in which that Party provides to its local exchange End Users.
- 1.4 Each Party will provide a Single Point of Contact (SPOC) for all ordering status inquiries or escalation contacts (via an 800# to that Party's LSC or equivalent) between 8:00 A.M. C.S.T. to 5:30 P.M., C.S.T., Monday through Friday (except holidays).
- 1.5 SBC MISSOURI will respond to emergency requests for after hours provisioning via the Local Ordering Center (LOC), 24 hrs/day, 7 days a week. Each Party will provide ordering, provisioning and migration services for Resale services Monday through Friday from 8 a.m. to 5:30 p.m. through its LSC or LOC as applicable. Either Party may request, at least two business days prior to the requested availability or as otherwise mutually agreed, that the other Party provide Saturday, Sunday, holiday, and/or additional out-of-hours (other than Monday through Friday from 8 A.M. to 5:30 P.M.) ordering, provisioning and migration services. For each requests for the other Party to perform such services, the Requesting Party will quote, within one (1) business day of the request, a cost-based rate for the number of hours and material estimated for such services. If the Requesting Party accepts the Requested Party's quote, the Requested Party will perform such services to the Requesting Party in the same manner as it does for itself and will bill the Requesting Party for the actual hours worked and material used.
- 1.6 The Parties will provide each other with the same provisioning intervals and procedures for design and complex services that it provides to its End Users.
- 1.7 Layout Record Cards for designed or complex Resale services, upon request by the CLEC.
- 1.8 Each Party will provide to the other advanced information on the details and requirements for planning and implementation of NPA splits within that Party's servicing area.
- 1.9 SBC MISSOURI will provide a subset of the Street Address Guide (SAG), which includes street addresses and the associated serving switches, enabling CLEC to map a End User address to a specific serving switch via CDROM, its website or other mutually agreed upon methods.
- 1.10 Each Party will train its employees who have contact with the other Party or any other LSP not to discriminate or disparage against any LSP or LSP End User, including the Parties to this Agreement.
- 1.11 Each Party will work together via the CLEC User Forum to share issues and address concerns regarding processes which impact the Parties. The CLEC User Forum is the primary process for each Party to address non-OSS issues that impact the daily business practices of multiple LECs. The Account Manager is



the primary contact for each Party to address non-OSS issues that impact the daily business practices for a specified LEC.

- 1.12 SBC MISSOURI and CLEC will work cooperatively regarding fraud and service annoyance call handling.
- 1.13 All misdirected calls from either Party's End Users will be given a recording (or a live statement) directing them to call their local provider. To the extent procedures change such that End Users become identifiable, such End Users will be directed to call the respective Party at a designated 800 number. CLEC and SBC MISSOURI will agree on the scripts to be used for this purpose.
- 1.14 Each Party's LSC or equivalent will provide coordination support for all designed and/or complex Resale services provided to the other Party. Services for which such support is to be provided include, without limitation, Data Services, Voice Grade Private Line, and ISDN PRI and BRI.
- 1.15 SBC MISSOURI will provide CLEC, upon request and not more than once per quarter, an electronic compare file that will contain the subscriber information stored in the SBC MISSOURI 9-1-1 database for End User served by CLEC through resale. CLEC may request that electronic compare files be provided for all of CLEC's resale End User accounts in Missouri (sorted by NPA), or by specific NPA. At CLEC's option, SBC MISSOURI will provide the electronic compare file on diskette, or by e-mail to CLEC. The compare file will be created in accordance with NENA standards on data exchange. Requests for electronic compare files will be processed by SBC MISSOURI within 14 days of receipt of CLEC's request. CLEC will review the electronic compare file(s) for accuracy, and submit any necessary corrections to SBC MISSOURI via the appropriate 911 listing correction process. Should CLEC wish to obtain the 911 compare file more frequently than once per quarter, terms and conditions for such additional access will be mutually agreed by the Parties.

## **2. PRE-ORDER AND ORDERING REQUIREMENTS**

- 2.1 SBC MISSOURI will provide to CLEC a Firm Order Confirmation (FOC), service completion, and other provisioning data and information.
- 2.2 For migration activity, in response to a Party's CSR (Customer Service Request) the other Party will provide End User information, including End User name, billing address and residence or business address, billed telephone numbers and features and services available in the end office where the End User is provisioned. Also, the other Party will:
  - 2.2.1 Identify features and services to which the End User subscribes (Each Party agrees that its representatives will not access the information specified in this Subsection until after the End User requests that the End User's local exchange service provider be changed to that Party);
  - 2.2.2 Assign a telephone number (if the End User does not have one assigned). Reservation and aging of these numbers remain the assigning Party's responsibility.
  - 2.2.3 Perform address verification.
- 2.3 All CSR data exchanged must include English, USOC and FID format.

## **3. ORDERING REQUIREMENTS**

- 3.1 Pursuant to Attachment 1 Resale and upon CLEC's request through a non-vacation Suspend/Restore order, will suspend or restore the functionality of any applicable Resale service, where technically feasible and in parity with SBC MISSOURI's End Users.
- 3.2 For the purposes of ordering service furnished under this Attachment, each request for new service (that is, service not currently being provided to the End User on the other Party's network, without regard to the identity of that End User's non-facilities based local service provider of record) shall be handled as a separate initial request for service and shall be charged per billable telephone number. Applicable service order charges and/or non-recurring charges associated with said new service will be applied as set forth in the Pricing Schedule.

- 3.3 Where available, the tariff retail additional line rate for Service Order Charges shall apply only to those requests for additional residential service to be provided at the same End User premises to which a residential line is currently provided on the other Party's network, without regard to the identity of that End User's non-facilities based local service provider of record.
- 3.4 When a CLEC End User converts existing service to another local service provider's resold service of the same type without any additions or changes (including any change to the PIC and/or LPIC), charges for such conversion will apply as set forth in the Pricing Schedule and are applied per billable telephone number.
- 3.5 SBC MISSOURI will provide to CLEC the functionality of blocking calls (e.g., 900, international calls, and third party or collect calls) by line or trunk on an individual switching element basis, to the extent that SBC MISSOURI provides such blocking capabilities to its End Users and to the extent required by law.
- 3.6 When ordering a Resale service, CLEC may order from SBC MISSOURI separate interLATA and intraLATA service providers (i.e., two PICs, when available) on a line or trunk basis and agrees to pay the applicable charges associated with such order as discussed in Attachment 1, Resale. SBC MISSOURI will accept PIC change orders for intraLATA toll and long distance services.
- 3.7 Unless When a Party to this agreement submits migration orders for a Resale service, all pre- assigned trunk or telephone numbers currently associated with that service will be retained without loss of switch feature capability and without loss of associated Ancillary Functions, including, but not limited to, Directory Assistance and E911 capability. To the extent such losses occur, the Parties will work cooperatively to resolve such occurrence(s).
- 3.8 When SBC MISSOURI converts a CLEC End User(s) existing service and additions or changes are made to the service at the time of the conversion, the normal service order charges and/or non-recurring charges associated with said additions and/or changes, including changes to PIC and LPIC, will be applied in addition to the conversion charge. CLEC will receive a wholesale discount on all non-recurring service order charges for the services listed in Pricing Schedule; no wholesale discount is available for the non-recurring service order charges for those services listed in Pricing Schedule under the heading "OTHER (Resale)."
- 3.9 SBC MISSOURI will provide with standard provisioning intervals for all Resale services.
- 3.10 SBC MISSOURI will update the E911 service provider information and establish directory listings, including all information appropriate for residential or business listings and foreign listings, from CLEC's service order. SBC MISSOURI will use a mechanized process to ensure that SBC MISSOURI's directory listing, 911 and LIDB information for the End User is not deleted during the process of converting that End User to resold service provided by a CLEC.

#### **4. PROVISIONING REQUIREMENTS**

- 4.1 Except in the event of the migration of an End User's service, only the provider of record can make changes to that End User's service.
- 4.2 Upon request from CLEC, SBC MISSOURI will provide an intercept referral message that includes any new telephone number of an CLEC End User for the same period of time that SBC MISSOURI provides such messages for its own End Users. CLEC and SBC MISSOURI will agree on the message to be used, which will be similar in format to the intercept referral message currently provided by SBC MISSOURI for its own End Users.
- 4.3 SBC MISSOURI will provide CLEC with a Firm Order Confirmation (FOC) for each order (multiple Working Telephone Numbers (WTNs) may be included on one order). The FOC will contain but is not necessarily limited to: purchase order number, telephone number, Local Service Request number, Due Date (DD), Service Order number.
- 4.4 Upon work completion, SBC MISSOURI will provide CLEC, an SOC (Service Order Completion) notice via facsimile or other mutually agreed upon method.

- 4.5 Where available, SBC MISSOURI will perform pre-testing for support of Complex Resale Services and will, upon request, provide all test and turn up results in support of said pre-testing via facsimile or as mutually agreed upon by the Parties.
- 4.6 As soon as identified, SBC MISSOURI will provide CLEC any reject error notifications via facsimile or other method agreed upon by the Parties.
- 4.7 When available, SBC MISSOURI will provide CLEC notice when SBC MISSOURI's committed Due Date (DD) is in jeopardy of not being met by SBC MISSOURI on any Resale service via facsimile or other method as mutually agreed upon by the Parties. When available SBC MISSOURI will concurrently provide the revised DD via facsimile or other method as agreed upon by the Parties.
- 4.8 When a SBC MISSOURI employee visits the premises of an CLEC End User, the SBC MISSOURI employee must inform the End User that he or she is there acting on behalf of CLEC. Materials left at the End User premises (e.g., a door hanger notifying the End User of the service visit) must also inform the End User that SBC MISSOURI was on their premises acting on behalf of CLEC. "CLEC branded" materials, to be utilized by SBC MISSOURI installation, maintenance and/or repair technicians when dealing with CLEC's customers, will be furnished to SBC MISSOURI by and at the sole expense of CLEC. SBC MISSOURI will not rebrand its vehicles and personnel.
- 4.9 SBC MISSOURI technicians will direct CLEC End User to contact CLEC if CLEC End User requests a change in service at the time of installation.
- 4.10 SBC MISSOURI will provide via facsimile or as otherwise agreed upon by the Parties, notification of any additional charges, included by not limited to, labor, expedited charges, engineering and proprietary requests associated with SBC MISSOURI will provide via facsimile, or as otherwise agreed upon by the Parties, notification of any additional charges associated with a given service including required construction charges for a given service. When construction is involved, SBC MISSOURI will obtain the CLEC's approval prior to commencing construction under a CLEC's order for such service. Rates associated with this Section will be applied in parity to SBC MISSOURI Resale tariffs, or as mutually agreed to by the Parties.

## **5. ORDER FORMAT AND DATA ELEMENTS FOR RESALE SERVICE**

- 5.1 When ordering Resale services, CLEC will use SBC MISSOURI's most current version of the LSOR.
- 5.2 Order format specifications for all migration and/or conversion of Resale services available to be ordered and all End User data required by will be made available by SBC MISSOURI to the CLEC, pursuant to SBC MISSOURI's most current version of the SBC MISSOURI LSOR, which will be made available via the SBC MISSOURI website or as otherwise mutually agreed upon by the Parties.
- 5.3 Appropriate ordering and provisioning codes to be used for each Resale service services available to be ordered will be made available by SBC MISSOURI to CLEC, pursuant to the SBC MISSOURI most current version of the SBC MISSOURI LSOR, which will be made available via the SBC MISSOURI website or as otherwise mutually agreed upon by the Parties.

## **6. ORDER DUE DATE**

- 6.1 When CLEC places an order, SBC MISSOURI will specify a Desired Due Date (DDD) and SBC MISSOURI will specify a due date (DD) based on the available intervals. In the event SBC MISSOURI DD is less than the standard interval, the service order will be assigned a DD using the applicable interval. Rates associated with a change in an order DD are identified in the Pricing Schedule.
- 6.2 If expedited service is requested, the CLEC Party will populate the Expedite and Expedite Reason on the request. SBC MISSOURI will contact the CLEC and the Parties will jointly negotiate an expedited DD. This situation will be considered an expedited order. Rates for expedited DDs and changes to the expedited DDs will apply as reflected in SBC MISSOURI's Appendix Pricing, Schedule of Prices labeled "Service Order

Charges Unbundled Element Expedited.” SBC MISSOURI will not complete the order prior to the DD or later than the DD unless authorized by the CLEC.

## **7. CHARGING FOR PROCESSING OF REQUESTS FOR RESOLD SERVICES**

- 7.1 When a CLEC End User(s) subscribes to resold service, recurring charges for the service shall apply at the wholesale discount set forth in Pricing Schedule. The tariff rates for such resold service shall continue to be subject to orders of the appropriate Commission.
- 7.2 When a Party converts an End User(s) existing service and additions or changes are made to the service at the time of the conversion, the normal service order charges and/or non-recurring charges associated with said additions and/or changes, including changes to PIC and LPIC, will be applied in addition to the conversion charge. Each Party will receive a wholesale discount on all non-recurring service order charges for the services listed in Appendix Pricing under the heading “Resale”; no wholesale discount is available for the non-recurring service order charges for those services listed in Pricing Schedule under the heading “OTHER (Resale).”

## ATTACHMENT 3: MAINTENANCE - RESALE

### 1. GENERAL REQUIREMENTS

- 1.1 SBC MISSOURI will provide repair, maintenance, and testing for all Resale services in accordance with the terms and conditions of this Attachment.

### 2. MAINTENANCE

- 2.1 SBC MISSOURI will provide maintenance for all Resale services ordered under this Agreement at levels equal to the maintenance provided by SBC MISSOURI in serving its End Users, and will meet the requirements set forth in this Attachment. Such maintenance requirements will include, without limitation, those applicable to testing and network management.

### 3. REPAIR SERVICE RESPONSE

- 3.1 SBC MISSOURI technicians will provide repair service that is at least equal in quality to that provided to SBC MISSOURI End Users; trouble calls from CLEC will receive response time and priorities that are at least equal to that of SBC MISSOURI End Users. CLEC and SBC MISSOURI agree to use the severity and priority restoration guidelines.

### 4. INTERCOMPANY COMMUNICATIONS

### 5. EMERGENCY RESTORATION PLAN

- 5.1 SBC MISSOURI NMSC will notify the CLEC via the Event Notification Process of activities involving the central office and inter-office network. Additionally, as cable cuts or failures are identified when the CLEC reports trouble to the LOC, the LOC will notify the affected CLEC;
  - 5.1.1 establishment of the SBC MISSOURI LOC as the single point of contact to provide CLEC with information relating to the status of restoration efforts and problem resolution during the Resale services restoration process;
  - 5.1.2 methods and procedures for reprovisioning of all Resale services after initial restoration. SBC MISSOURI agrees that Telecommunications Service Priority ("TSP") services for CLEC carry equal priority with SBC MISSOURI TSP services for restoration. SBC MISSOURI the will follow the guidelines established under the National Security Emergency Procedures (NSEP) plan and will follow TSP guidelines for restoration of emergency services.

### 6. MISDIRECTED REPAIR CALLS

- 6.1 All misdirected repair calls to SBC MISSOURI from CLEC End Users will be given a recording (or live statement) directing them to call the number designated by CLEC. Scripts used by SBC MISSOURI will refer CLEC End Users (in both English and Spanish when available) to the CLEC 800 number in the CLEC CNSC. All calls to 611 in SBC MISSOURI's territory will continue to receive a standardized vacant code announcement (i.e., a recording specifying the number dialed is not valid) for all End Users. CLEC on a reciprocal basis will refer all misdirected repair calls that CLEC receives for SBC MISSOURI End Users to a SBC MISSOURI designated number.

### 7. REPAIR PROCEDURES

- 7.1 SBC MISSOURI agrees to the following:
  - 7.1.1 The SBC MISSOURI LOC will be on-line and operational twenty-four (24) hours per day, seven (7) days per week. CLEC will provide a single point of contact (SPOC) for all of CLEC's maintenance applicable to this Agreement (via an 800 number) 24 hours per day, seven (7) days a week.

- 7.1.2 While in manual mode operation, SBC MISSOURI will provide CLEC "estimated time to restore." Upon request, SBC MISSOURI LOC will provide CLEC status of missed repair commitments. When the trouble ticket commitment time occurs and the trouble ticket has not been closed, additional status will be provided at the CLEC's request. The original trouble commitment will not be changed due to possible loss of priority for that End User. All missed appointments (e.g., vendor meets) will be handled in the same way. See Attachment 27 OSS for an electronic processing.
- 7.1.3 For purposes of this Section, a Resale service is considered restored or a trouble resolved when the quality of a Resale service is equal to that provided before the outage or the trouble occurred.

## **8. ESCALATION PROCEDURES**

- 8.1 SBC MISSOURI will provide CLEC with written escalation procedures for maintenance resolution to be followed if, in CLEC's judgment, any individual trouble ticket or tickets are not resolved in a timely manner. The escalation procedures to be provided hereunder shall include names and telephone numbers of SBC MISSOURI management personnel who are responsible for maintenance issues. CLEC acknowledges that the LOC escalation contact list found on CLEC OnLine meets the requirements of this Section.

## **9. PREMISES VISIT PROCEDURES**

- 9.1 SBC MISSOURI Maintenance of Service Charges, when applicable, will be billed by SBC MISSOURI to CLEC, and not to CLEC's End Users.
- 9.1.1 Dispatching of SBC MISSOURI technicians to CLEC End User premises shall be accomplished by SBC MISSOURI pursuant to a request received from CLEC. Additionally, dispatching of SBC MISSOURI technicians may occur when SBC MISSOURI detects network trouble during routine maintenance.
- 9.1.2 A SBC MISSOURI employee visits the premises of an CLEC local End User, the SBC MISSOURI employee must inform the End User that he or she is there acting on behalf of CLEC. Materials left at the End User premises (e.g., a door hanger notifying the End User of the service visit) must also inform the End User that SBC MISSOURI was on their premises acting on behalf of CLEC. "CLEC branded" materials, to be utilized by SBC MISSOURI installation, maintenance and/or repair technicians when dealing with CLEC's customers, will be furnished to SBC MISSOURI by and at the sole expense of CLEC. SBC MISSOURI will not rebrand its vehicles and personnel.
- 9.1.3 If a trouble cannot be cleared without access to CLEC's local End User's premises and the End User is not at home, the SBC MISSOURI technician will leave at the End User's premises a CLEC branded "no access" card requesting the End User to call CLEC for rescheduling of repair.

## **10. DESIGNED AND/OR COMPLEX**

- 10.1 SBC MISSOURI will perform testing (including trouble shooting to isolate any problems) of Resale services purchased by CLEC in order to identify any new circuit failure performance problems. CLEC will utilize routine maintenance procedures for reporting troubles.

## ATTACHMENT 4: CONNECTIVITY BILLING - RESALE

### 1. GENERAL

This Attachment 4: Connectivity Billing-Resale describes the requirements for SBC MISSOURI to bill all charges CLEC incurs for purchasing Resale services.

### 2. BILLABLE INFORMATION AND CHARGES

- 2.1 In accordance with this Agreement, SBC MISSOURI will bill those charges CLEC incurs as a result of CLEC purchasing Resale services from SBC MISSOURI (hereinafter "Connectivity Charges"). Each bill for Connectivity Charges (hereinafter "Connectivity Bill") will be formatted in accordance with EDI for Resale services. CLEC will translate the EDI formatted bills to meet CABS/BOS specifications. SBC MISSOURI will assist CLEC with EDI mapping. Each Billing Account Number (BAN) will be sufficient to enable CLEC to identify the Resale services ordered by CLEC to which Connectivity Charges apply. Each Connectivity Bill, including Auxiliary Service Information, will set forth the quantity and description of Resale services provided and billed to CLEC.
- 2.2 SBC MISSOURI will provide CLEC a monthly Connectivity Bill that includes all Connectivity Charges incurred by and credits and/or adjustments due to CLEC for those Resale services ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each Connectivity Bill, including Auxiliary Service Information, provided by SBC MISSOURI to CLEC will include: (1) all non-usage sensitive charges incurred for the period beginning with the day after the current bill date and extending to, and including, the next bill date; (2) any known unbilled non-usage sensitive charges for prior periods; (3) unbilled usage sensitive charges for the period beginning with the last bill date and extending up to, but not including, the current bill date; (4) any known unbilled usage sensitive charges for prior periods; (5) any known unbilled adjustments; and (6) any Customer Service Record (CSR) for all flat-rated charges.
- 2.3 The Bill Date, as defined herein, must be present on each bill transmitted by SBC MISSOURI to CLEC. Connectivity Bills will not be rendered for any Connectivity Charges which are incurred under this Agreement on or before one (1) year preceding the Bill Date.
- 2.4 Each Party will provide the other Party at no charge a contact person for the handling of any Connectivity Billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Attachment 4: Connectivity Billing - Resale.
- 2.5 SBC MISSOURI will assign to CLEC one Billing Account Number (BAN) per Regional Accounting Office (RAO) for consumer and one BAN per RAO for business.

### 3. ISSUANCE OF CONNECTIVITY BILLS – GENERAL

- 3.1 SBC MISSOURI will issue all Connectivity Bills in accordance with the terms and conditions set forth in this Section. SBC MISSOURI will establish monthly billing dates (Bill Date) for each BAN, as further defined in the EDI/BOS document, which Bill Date will be the same date month to month. Each BAN will be provided in 13 alpha/numeric characters and will remain constant from month to month, unless changed as agreed to by the Parties. Each Party will provide the other Party at least thirty (30) calendar days written notice prior to changing, adding or deleting a BAN. The Parties will provide one Connectivity Billing invoice associated with each BAN. Multiple BANs for each Regional Accounting Office (RAO) will be provided as part of a single EDI transmission. All Connectivity Bills must be received by CLEC no later than ten (10) calendar days from Bill Date and at least twenty (20) calendar days prior to the payment due date (as described in this Attachment 4: Connectivity Billing - Resale), whichever is earlier. Any Connectivity Bill received on a Saturday, Sunday or a day designated as a holiday by the Chase Manhattan Bank of New York (or such other bank as the Parties agree) will be deemed received the next business day. If CLEC fails to receive Connectivity Billing data and information within the time period specified above, the payment due date will be extended by the number of days the Connectivity Bill is late.

- 3.2 If CLEC requests an additional copy(ies) of a bill, CLEC will pay SBC MISSOURI a reasonable fee per additional bill copy, unless such copy(ies) was requested due to errors, omissions, or corrections, or the failure of the original transmission to comply with the specifications set forth in this Agreement. The fee for additional bill copies will be as defined in the state General Exchange tariff.
- 3.3 To avoid transmission failures or the receipt of Connectivity Billing information that cannot be processed, the Parties will provide each other with their respective process specifications and edit requirements. CLEC will provide SBC MISSOURI reasonable (within 24 hours) notice if a Connectivity Billing transmission is received that does not meet the specifications in this Attachment. Such transmission will be corrected and resubmitted to CLEC at SBC MISSOURI's sole expense, in a form that can be processed. The payment due date for such resubmitted transmissions will be twenty (20) days from the date that the transmission is received in a form that can be processed and that meets the specifications set forth in this Attachment 4: Connectivity Billing - Resale.

#### **4. ELECTRONIC TRANSMISSIONS**

- 4.1 SBC MISSOURI will electronically transmit Connectivity Billing information and data for Resale services in the appropriate EDI format via Connect: Direct as outlined in the current version of SBC MISSOURI's Electronic Commerce Customer Guide, or as the Parties may otherwise agree. The Parties agree that a T1.5 or 56kb circuit to the gateway for Connect: Direct is required. If SBC MISSOURI has an established Connect: Direct link with CLEC, that link can be used for data transmission if the location and applications are the same for the existing link. Otherwise, a new link for data transmission must be established. SBC MISSOURI and CLEC will provide each other appropriate Connect: Direct Node IDs. Any change to either Party's Connect: Direct Node IDs must be sent to the other Party no later than twenty-one (21) calendar days before the change takes effect.

#### **5. TAPE OR PAPER TRANSMISSIONS**

- 5.1 In the event either Party does not have Connect: Direct capabilities upon the Effective Date of this Agreement, such Party agrees to establish Connect: Direct transmission capabilities with the other Party within the time period mutually agreed and at the establishing Party's expense. Until such time, the Parties will transmit billing information to each other via another available media (as agreed to by CLEC and SBC MISSOURI). Connectivity billing information and data for payment contained on magnetic tapes or paper will be sent to the Parties at the following locations. The Parties acknowledge that all tapes transmitted to the other Party via U.S. Mail or Overnight Delivery and which contain Connectivity Billing data will not be returned to the sending Party.

#### **6. TESTING REQUIREMENTS**

- 6.1 At least ninety (90) days prior to SBC MISSOURI sending CLEC a mechanized Connectivity Bill for the first time via electronic transmission, or tape, or at least 30 days prior to changing mechanized formats, SBC MISSOURI will send to CLEC Connectivity Bill data in the appropriate mechanized format for testing to ensure that the bills can be processed and that the bills comply with the requirements of this Attachment 4: Connectivity Billing - Resale. The Parties will mutually agree to develop a testing process to ensure the accurate transmission of the Connectivity Bill. When SBC MISSOURI meets mutually agreed testing specifications, SBC MISSOURI may begin sending CLEC mechanized Connectivity Bills on the next Bill Date, or within ten (10) days, whichever is later.



**7. ADDITIONAL REQUIREMENTS**

7.1 SBC MISSOURI agrees that if it transmits data to CLEC in a mechanized format, SBC MISSOURI will also comply with the following specifications which are not contained in EDI/BOS guidelines but which are necessary for CLEC to process Connectivity Billing information and data:

- a) The BAN shall not contain embedded spaces or low values;
- b) The Bill Date shall not contain spaces or non-numeric values;
- c) Each Connectivity Bill must contain at least one detail record;
- d) Any "From" Date should be less than the associated "Thru" Date and neither date can contain spaces.

**8. BILL ACCURACY CERTIFICATION**

8.1 The Parties agree that in order to ensure the proper performance and integrity of the entire Connectivity Billing process, SBC MISSOURI will be responsible for transmitting to CLEC an accurate and current bill. For the purposes of this Agreement, CLEC and SBC MISSOURI will develop the processes and methodologies required for Resale services bill certification.

## **ATTACHMENT 5: PROVISION OF CUSTOMER USAGE DATA - RESALE**

### **1. INTRODUCTION**

- 1.1 This Attachment sets forth the terms and conditions for SBC MISSOURI's provision of Usage Data (as defined in this Attachment) to CLEC. Usage Data will be provided by SBC MISSOURI to CLEC when CLEC purchases Resale services from SBC MISSOURI.

### **2. GENERAL REQUIREMENTS FOR USAGE DATA**

- 2.1 SBC MISSOURI's provision of Usage Data to CLEC will be in accordance with performance metrics as reported on the CLEC Online. SBC MISSOURI's performance based on such performance metrics will be measured and reported at the time CLEC begins providing local service to customers, but SBC MISSOURI's provision of Usage Data will not be required to meet such performance metrics until six (6) months after CLEC begins providing local services to customers.
- 2.2 SBC-MISSOURI will retain Usage Data in accordance with the SBC Daily Usage File User's Guide available on SBC's CLEC OnLine website subject to applicable laws and regulations.

### **3. USAGE DATA SPECIFICATIONS**

- 3.1 SBC MISSOURI will provide usage data for CLEC Customers using SBC MISSOURI-provided Resale services. Usage Data includes, but is not limited to, the following categories of information:
- a) Completed calls;
  - b) Use of CLASS/LASS/Custom Features;
  - c) Calls to Directory Assistance where SBC MISSOURI provides such service to an CLEC customer;
  - d) Calls completed via SBC MISSOURI - provided Operator Services where SBC MISSOURI provides such service to CLEC's Local Service customer;
  - e) Station level detail for SBC MISSOURI - provided CENTREX and PLEXAR families of services;
  - f) Complete call detail and complete timing information for Resale services.

SBC MISSOURI will provide Usage Data for that SBC MISSOURI records. (e.g., Local Measured Services).

### **4. USAGE DATA FORMAT**

- 4.1 SBC MISSOURI will provide Usage Data in the Alliance for Telecommunications Industry Solutions (ATIS) Ordering and Billing Forum (OBF) Exchange Message Interface (EMI)-format and by category, group and record type, as specified in the SBC Daily Usage File User's Guide or as otherwise agreed to by the Parties.
- 4.2 SBC MISSOURI will include the Working Telephone Number (WTN) of the call originator on each EMI call record, when available.
- 4.3 End user customer usage records and station level detail records will be in packs in accordance with EMI guidelines.

### **5. USAGE DATA REQUIREMENTS**

- 5.1 SBC MISSOURI will pack and organize the Usage Data according to EMI guidelines.
- 5.2 SBC MISSOURI will provide Usage Data for Resale services to a CLEC locations as agreed to by the Parties.
- 5.3 SBC MISSOURI will transmit formatted Usage Data to CLEC via CONNECT: Direct or as otherwise agreed to by the Parties.
- 5.4 CLEC and SBC MISSOURI will test and certify the CONNECT:Direct interface to ensure the accurate transmission of Usage Data.

- 5.5 SBC MISSOURI will provide Usage Data to CLEC daily (normally Monday through Friday cycles). Holiday exceptions are listed in the SBC Daily Usage File User's Guide.
- 5.6 The IS Call Center can be contacted to respond to CLEC record transmission inquiries. Other Usage inquiries should be coordinated through Account Management. If written notification is not received within thirty (30) calendar days, SBC MISSOURI shall have no further obligation to recover the data and shall have no further liability to the CLEC.

## **6. CHARGES**

- 6.1 SBC-MISSOURI will bill and CLEC will pay the applicable charges for Usage Data set forth in this Agreement. Billing and payment will be in accordance with the applicable terms and conditions set forth in this Agreement.

## ATTACHMENT 6: UNBUNDLED NETWORK ELEMENTS

### 1. INTRODUCTION

This Attachment 6: Lawful Access to Unbundled Network Elements (Lawful UNEs) to the Agreement sets forth the unbundled Network Elements that SBC MISSOURI agrees to offer to CLEC for the provision of a Telecommunication Service ((Act, Section 251(c)(3)). The specific terms and conditions that apply to the unbundled Network Elements are described below. The price for each Network Element is set forth in Appendix Pricing - Unbundled Network Elements, attached hereto.

### 2. GENERAL TERMS AND CONDITIONS (COMPLETELY UPDATED)

- 2.1 Lawful UNEs and Declassification. This Agreement sets forth the terms and conditions pursuant to which SBC MISSOURI will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act in SBC MISSOURI's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC MISSOURI shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC MISSOURI is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs."
- 2.1.1 A network element, including a network element referred to as a Lawful UNE under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."
- 2.1.2 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified upon or by (a) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (b) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that an incumbent LEC is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act; or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Lawful UNE or be Declassified generally, or on an element-specific, route-specific or geographically-specific basis or on a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.
- 2.1.3 It is the Parties' intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1. If an element is not required to be provided under this Appendix Lawful UNE and/or not described in this Appendix Lawful UNE, it is the Parties' intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Appendix, Schedule or in the Pricing Appendix.
- 2.1.4 By way of example only, if terms and conditions of this Agreement state that SBC MISSOURI is required to provide a Lawful UNE or Lawful UNE combination, and that Lawful UNE or the involved Lawful UNE (if a combination) is Declassified or otherwise no longer constitutes a Lawful UNE, then SBC MISSOURI shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.

- 2.2 Nothing contained in the Agreement shall be deemed to constitute consent by SBC MISSOURI that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC MISSOURI is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
- 2.3 The preceding includes without limitation that SBC MISSOURI shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC MISSOURI network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 2.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.
- 2.5 Transition Procedure for Elements that are Declassified during the Term of the Agreement
- 2.5.1 The procedure set forth in Section 2.5.2 does not apply to the Declassification events described in Sections 4.3.4.4 (DS1 Loop "Caps"), 4.3.5.4 (DS3 Loop "Caps"), 4.4.1 (Declassification Procedure – DS1 Loops), 4.4.2 (Declassification Procedure – DS3 Loops), 10.3.4 (DS3 Transport "Caps"), 10.3.5 (DS1 Transport "Caps"), 10.5.2 (DS1 Transport Declassification) and 10.5.3 (DS3 Transport Declassification), which set forth the consequences for Declassification of DS1 and DS3 Loops, DS1 and DS3 Transport and Dark Fiber Transport, where applicable "caps" are met, or where Declassification occurs because wire centers/routes meet the criteria set forth in the FCC's TRO Remand Order.
- 2.5.2 SBC MISSOURI shall only be obligated to provide Lawful UNEs under this Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a Lawful UNE, such element is no longer required to be provided under this Agreement and CLEC shall cease ordering such element(s) under this Agreement, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC MISSOURI will provide written notice to CLEC of the Declassification of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC MISSOURI agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as Declassified or as otherwise no longer being a Lawful UNE in the SBC MISSOURI notice letter referenced in this Section 2.5. SBC MISSOURI reserves the right to audit the CLEC orders transmitted to SBC MISSOURI and to the extent that the CLEC has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and SBC MISSOURI's rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to CLEC with regard to the element(s) identified in the SBC MISSOURI notice, including the combination or other arrangement in which the element(s) were previously provided:
- (a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or
  - (b) SBC MISSOURI and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.

- Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a) above, and if CLEC and SBC MISSOURI have failed to reach agreement, under (b) above, as to a substitute service arrangement or element, then SBC MISSOURI may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.
- 2.5.3 The provisions set forth in this Section 2.5 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2.5 "Transition Period" to be implemented or effective as provided above. Further, Section 2.5 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement is Declassified or is otherwise no longer a Lawful UNE, even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Section 2.5, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
- 2.5.4 Notwithstanding anything in this Agreement or in any Amendment, SBC MISSOURI shall have no obligation to provide, and CLEC is not entitled to obtain (or continue with) access to any network element on an unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or otherwise, once such network element has been or is Declassified or is otherwise no longer a Lawful UNE. The preceding includes without limitation that SBC MISSOURI shall not be obligated to provide combinations (whether considered new, pre-existing or existing) involving SBC MISSOURI network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.
- 2.6 SBC MISSOURI has identified wire centers that must be classified as Tier 1 or Tier 2 wire centers pursuant to the criteria specified by the FCC in Rules 51.319(e)(2)(ii)-(iv) for DS1/DS3 Dedicated Transport and Dark Fiber Dedicated Transport and wire centers that meet the FCC's non-impairment criteria as specified by the FCC in Rules 51.319(a)(4) and 51.319(a)(5) for DS1/DS3 Loops. Except as provided below, CLEC may not request or obtain (i) DS1/DS3 Loops to a building served by a wire center that SBC MISSOURI has designated as non-impaired, (ii) DS1 Dedicated Transport between Tier 1 wire centers, (iii) DS3 Dedicated Transport between Tier 1 and/or 2 wire centers, and (iv) Dark Fiber Dedicated Transport between Tier 1 and/or 2 wire centers.
- 2.6.1 In the event that CLEC disputes one or more of SBC MISSOURI's wire center determinations, CLEC shall undertake a reasonably diligent inquiry to determine whether the specific wire center(s) in question satisfies the availability criteria established by the FCC as referenced above. Prior to placing any order for DS1/DS3 Loops, DS1/DS3 Transport or Dark Fiber Dedicated Transport that SBC MISSOURI has designated as unavailable pursuant to the FCC's criteria referenced above, CLEC shall self-certify that based on its reasonably diligent inquiry, the wire center (for DS1/DS3 Loops) and/or route (for DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport) does in fact meet the applicable FCC criteria. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, SBC MISSOURI shall provision the requested UNE in accordance with CLEC's order and within SBC MISSOURI's standard ordering interval applicable to such UNE and, if it desires to do so, dispute the self-certification and associated orders pursuant to Section 2.6.1.1-2.6.1.2 below. CLEC may not self-certify that it is entitled to obtain DS1/DS3 Loops or DS1/DS3 Dedicated Transport at a location where CLEC has met the volume cap set forth in Sections 4.3.4.4 and 4.3.5.4 (for DS1/DS3 Loops) and 10.3.4 and 10.3.5 (for DS1/DS3 Dedicated Transport) or in a wire center or route where the Commission has already approved SBC MISSOURI's designation.
- 2.6.1.1 In the event of a dispute following CLEC's self-certification, upon reasonable request by the Commission or CLEC, SBC MISSOURI will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, data supporting its classification of wire centers only to the extent necessary to justify the classification. CLEC may elect to self-certify using a written or electronic notification sent to

SBC MISSOURI, so long as the self-certification complies with the FCC's TRRO, para. 234, and is in substantial compliance with SBC's requested format as set forth in CLECALL-05-039, issued March 11, 2005. CLEC must remain in compliance with its self-certification for so long as CLEC continues to receive the aforementioned facilities and/or services from SBC MISSOURI.

- 2.6.1.2 Disputes regarding CLEC's compliance with this Section shall be addressed through the dispute resolution process set out in this Agreement. If the Parties determine through informal dispute resolution (or if formal dispute resolution through arbitration at the state Commission or otherwise determines) that CLEC was not entitled to the provisioned DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 2.5.1, the rates paid by CLEC for the affected loop or transport shall be subject to true-up to an equivalent special access rate as of the date billing began for the provisioned element, and CLEC shall be required to disconnect or to transition from the DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport to another wholesale service within thirty (30) days of the determination. If CLEC does not disconnect or transition the DS1/DS3 Loop or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport within the thirty (30) day period, then SBC MISSOURI may transition the circuit to an analogous access service or disconnect the circuit. Conversion of DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport shall be performed in a manner reasonably designed to minimize the disruption or degradation to CLEC's customer's service.
- 2.6.2 The parties recognize that wire centers that are not currently designated as meeting the FCC's non-impairment thresholds referenced above, may meet those thresholds in the future. In the event that a wire center that is not currently designated as meeting one or more of the FCC's non-impairment thresholds, meets one or more of these thresholds at a later date, SBC MISSOURI may add the wire center to the list of designated wire centers using the following process
- 2.6.2.1 SBC MISSOURI will provide notification to CLECs via Accessible Letter that it has determined that a wire center that had previously not met one or more of the FCC's impairment thresholds now does so.
- 2.6.2.2 SBC MISSOURI will continue to accept CLEC orders for impacted DS1/DS3 Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for 30 calendar days after the date the Accessible Letter is issued.
- 2.6.2.3 In the event the CLEC disagrees with SBC MISSOURI's determination, CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute SBC MISSOURI's determination regarding the wire center following the self-certification process described above.
- 2.6.2.3.1 If the CLEC does not use the self-certification process to dispute SBC MISSOURI's determination within 60 calendar days of the issuance of the Accessible Letter, CLEC must begin to transition any UNEs that have been declassified by the transition process for declassified UNEs as set forth in Section 2.5 unless declassification occurs prior to the end of the transition period for the affected UNE set forth in Section 2.6.1.2. No additional notification will be required.
- 2.6.2.3.2 If the CLEC does follow the self-certification process to dispute SBC MISSOURI's determination within 60 calendar days of the issuance of the Accessible Letter, SBC MISSOURI may dispute CLEC's self-certification as described in Section 2.6.1 above.
- 2.7 CLEC may use one or more Lawful Unbundled Network Elements to provide any technically feasible feature, function, or capability that such Lawful Unbundled Network Element(s) may provide, within the technical parameters of the Lawful Unbundled Network Elements.
- 2.7.1 If CLEC orders Lawful unbundled Network Elements in combination pursuant to this Attachment, and identifies to SBC MISSOURI the type of telecommunications service it intends to deliver to its end user customer through that combination (e.g., POTS, ISDN), SBC MISSOURI will provide the requested elements with all the functionality, and with at least the same quality of performance and operations systems support (ordering, provisioning, maintenance, billing and recording), that SBC MISSOURI provides through its own network to its local exchange service customers receiving equivalent service, unless CLEC requests a lesser or greater quality of performance through the Bona Fide-process (BFR). Lawful Unbundled Network element

combinations provided to CLEC by SBC MISSOURI will meet all performance criteria and measurements that SBC MISSOURI achieves when providing equivalent end user service to its local exchange service customers (e.g., POTS, ISDN).

## 2.8 Conditions for Access to Lawful UNEs

2.8.1 In order to access and use Lawful UNEs, CLEC must be a Telecommunications Carrier (Section 251(c)(3)), and must use the Lawful UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)) as permitted by the FCC. Together, these conditions are the "Statutory Conditions" for access to Lawful UNEs. Accordingly, CLEC hereby represents and warrants that it is a Telecommunications Carrier and that it will notify SBC MISSOURI immediately in writing if it ceases to be a Telecommunications Carrier. Failure to so notify SBC MISSOURI shall constitute material breach of this Agreement.

2.8.1.1 By way of example, use of a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise) to provide service to CLEC or for other administrative purpose(s) does not constitute using a Lawful UNE pursuant to the Statutory Conditions.

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

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

## 2.9 New Combinations Involving Lawful UNEs

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

2.9.2 Any combining obligation is limited solely to combining of Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.

2.9.3 In the event that SBC MISSOURI denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, SBC MISSOURI shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC MISSOURI shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.9 of this Attachment.

2.9.4 In accordance with and subject to the provisions of this Section 2.9, including Sections 2.9.4.2 and 2.9.6, the new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.

2.9.4.1 The Parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as SBC MISSOURI being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Attachment was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC MISSOURI is willing to perform the actions



necessary to also complete the actual physical combination for those new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:

- 2.9.4.1.1 Section 2.9, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC MISSOURI from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to *Verizon Comm. Inc.*, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC MISSOURI. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC MISSOURI from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.
- 2.9.4.1.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, SBC MISSOURI shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.9.4.1.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.9.4.1.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.
- 2.9.4.1.3 Without affecting the application of Section 2.9.4.1.2 (which shall apply in accordance with its provisions), upon notice by SBC MISSOURI, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC MISSOURI obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.
- 2.9.4.2 A new Lawful UNE combination, if any, listed on a Schedule – Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.
- 2.9.4.3 For a new Lawful UNE combination, if any, listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC MISSOURI, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.
- 2.9.4.4 Upon notice by SBC MISSOURI, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC MISSOURI in providing the new Lawful UNE combinations, if any, set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 2.9.4.2. For any such work done by SBC MISSOURI under Section 2.9.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by SBC MISSOURI, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.
- 2.9.5 In accordance with and subject to the provisions of this Section 2.9, any request not included in Section 2.9.4 in which CLEC wants SBC MISSOURI to perform the functions necessary to combine Lawful UNEs or

to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC MISSOURI to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.

- 2.9.5.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined and the needed location(s), the order in which the Lawful UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC MISSOURI Lawful UNE and the lawful network element(s) possessed by CLEC.
- 2.9.5.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by SBC MISSOURI under Section 2.9.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC MISSOURI's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests SBC MISSOURI to perform work not required by Section 2.9.1, CLEC shall be charged a market-based rate for any such work.
- 2.9.6 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.9 apply only in situations where each of the following is met:
  - 2.9.6.1 it is technically feasible, including that network reliability and security would not be impaired;
  - 2.9.6.2 SBC MISSOURI's ability to retain responsibility for the management, control, and performance of its network would not be impaired;
  - 2.9.6.3 SBC MISSOURI would not be placed at a disadvantage in operating its own network;
  - 2.9.6.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC MISSOURI's network; and
  - 2.9.6.5 CLEC is
    - 2.9.6.5.1 unable to make the combination itself; or
    - 2.9.6.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 2.9.6.5 ceases if SBC MISSOURI informs CLEC of such need to combine.
- 2.9.7 For purposes of Section 2.9.6.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without limitation:
  - 2.9.7.1 at an SBC MISSOURI premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement, or has established one of the UNE connection Methods described in Section 3;
- 2.9.8 Section 2.9.6.5 shall only begin to apply thirty (30) days after notice by SBC MISSOURI to CLEC. Thereafter, SBC MISSOURI may invoke Section 2.9.6.5 with respect to any request for a combination involving Lawful UNEs.
- 2.10 Conversion of Wholesale Services to Lawful UNEs
  - 2.10.1 Upon request, SBC MISSOURI shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Attachment, so long as the CLEC and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)
  - 2.10.2 Where processes for the conversion requested pursuant to this Attachment are not already in place, SBC MISSOURI will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

- 2.10.3 Except as agreed to by the Parties or otherwise provided hereunder, SBC MISSOURI shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs.
- 2.10.3.1 SBC MISSOURI may charge applicable service order charges and record change charges.
- 2.10.4 This Section 2.10 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Attachment.
- 2.10.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), SBC MISSOURI may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.
- 2.10.5.1 This Section 2.10.5 applies to any Lawful UNE or combination of Lawful UNEs, including whether or not such Lawful UNE or combination of Lawful UNEs had been previously converted from an SBC MISSOURI service.
- 2.10.5.2 SBC MISSOURI may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.
- 2.10.6 In requesting a conversion of an SBC MISSOURI service, CLEC must follow the guidelines and ordering requirements provided by SBC MISSOURI that are applicable to converting the particular SBC MISSOURI service sought to be converted.
- 2.10.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC MISSOURI's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.
- 2.11 Commingling
- 2.11.1 "Commingling" means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC MISSOURI, or the combining of a Lawful UNE, or a combination of Lawful UNEs, with one or more such facilities or services. "Commingle" means the act of commingling.
- 2.11.1.1 "Commingled Arrangement" means the arrangement created by Commingling.
- 2.11.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC MISSOURI offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).
- 2.11.1.3 Commingling is not permitted, nor is SBC MISSOURI required to perform the functions necessary to Commingle, where the Commingled Arrangement (i) is not technically feasible, including that network reliability and security would be impaired; or (ii) would impair SBC MISSOURI's ability to retain responsibility for the management, control, and performance of its network; or (iii) would place SBC MISSOURI at a disadvantage in operating its own network; or (iv) would undermine the ability of other Telecommun Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC MISSOURI's network.
- 2.11.1.4 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC MISSOURI will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.

- 2.11.1.5 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC MISSOURI with Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that SBC MISSOURI might offer pursuant to Section 271 of the Act.
- 2.11.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC MISSOURI shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC MISSOURI to the extent required by FCC rules and judicial orders.
- 2.11.3 Upon request, and subject to this Section 2, SBC MISSOURI shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC MISSOURI (as well as requests where CLEC also wants SBC MISSOURI to complete the actual Commingling), except that SBC MISSOURI shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) the CLEC is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC MISSOURI's ability to retain responsibility for the management, control, and performance of its network would be impaired.; or (iv) SBC MISSOURI would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC MISSOURI's network. Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, but such obligation under this Section ceases if SBC MISSOURI informs CLEC of such need to Commingle.
- 2.11.3.1 For purposes of Section 2.11 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from SBC MISSOURI are available to CLEC, including without limitation:
- 2.11.3.1.1 at an SBC MISSOURI premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement.
- 2.11.3.2 Section 2.11.3(i) shall only begin to apply thirty (30) days after notice by SBC MISSOURI to CLEC. Thereafter, SBC MISSOURI may invoke Section 2.11.3(i) with respect to any request for Commingling.
- 2.11.4 In accordance with and subject to the provisions of this Section 2.11, any request by CLEC for SBC MISSOURI to perform the functions necessary to Commingle (as well as requests where CLEC also wants SBC MISSOURI to complete the actual Commingling) not already identified, shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.
- 2.11.4.1 SBC MISSOURI is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.
- 2.11.4.2 Any CLEC request for a Commingled Arrangement not found on the then-existing list of orderable Commingled Arrangements must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC MISSOURI sought to be Commingled and the needed location(s), the order in which such Lawful UNEs, such combinations of Lawful UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.
- 2.11.4.2.1 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC MISSOURI under this Section 2.8 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC MISSOURI's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests SBC MISSOURI to

perform work not required by this Section 2.11.4, CLEC shall be charged a market-based rate for any such work.

- 2.11.4.3 SBC MISSOURI shall charge the appropriate non-recurring rates as set forth in the pricing schedule for Lawful UNEs (or Lawful UNE combinations) Commingled with facilities or services obtained at wholesale (including for example special access services) on an element-by-element basis, and such facilities and services on a facility-by-facility, service-by-service basis for the type of service and activity being requested to create the commingled arrangement.
- 2.11.5 SBC MISSOURI shall not be required to, and shall not, provide “ratcheting” as a result of Commingling or a Commingled Arrangement. As a general matter, “ratcheting” is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate. SBC MISSOURI shall charge the rates for Lawful UNEs (or Lawful UNE combinations) Commingled with facilities or services obtained at wholesale (including for example special access services) on an element-by-element basis, and such facilities and services on a facility-by-facility, service-by-service basis.
- 2.11.6 Nothing in this Agreement shall impose any obligation on SBC MISSOURI to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The preceding includes without limitation that SBC MISSOURI shall not be obligated to Commingle network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria, including Statutory Conditions, or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.
- 2.11.7 In the event that Commingling involves SBC MISSOURI performing the functions necessary to combine Lawful UNEs (e.g., make a new combination of Lawful UNEs), and including making the actual Lawful UNE combination, then Section 2.6 shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement.
- 2.11.8 Subject to this 2.11, SBC MISSOURI shall not deny access to a Lawful UNE or a combination of Lawful UNEs on the grounds that one or more of the Lawful UNEs is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from SBC MISSOURI.
- 2.11.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, SBC MISSOURI's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass SBC MISSOURI offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNEs under 47 U.S.C. § 251(c)(3).
- 2.12 Mandatory Eligibility Criteria for Access to Certain Lawful UNEs
- 2.12.1 Except as provided below in this Section 2.12 or elsewhere in the Agreement and subject to this Section and Section 2.10, Conversion of Wholesale Services to UNEs, of this Appendix, SBC MISSOURI shall provide access to UNEs and combinations of UNEs without regard to whether the CLEC seeks access to the UNEs to establish a new circuit or to convert an existing circuit from a service to UNEs.
- 2.12.1.1 “Enhanced Extended Link” or “EEL” means a UNE combination consisting of an unbundled loop(s) and Unbundled Dedicated Transport, together with any facilities, equipment, or functions necessary to combine those UNEs (including, for example, multiplexing capabilities). An DS1 or higher EEL is required to terminate in a collocation arrangement that meets the requirements of Section 2.12.3 of this Appendix (e.g., the end of the Unbundled Dedicated Transport that is opposite the end connected to the UNE local loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).
- 2.12.2 SBC MISSOURI is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher

transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions and criteria detailed below are met with respect to the arrangement being sought:

- 2.12.2.1 CLEC (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.
- 2.12.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS3 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:
  - 2.12.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC MISSOURI local service area and within the LATA where the circuit is located ("Local Telephone Number"), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification); and
  - 2.12.2.2.2 Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
  - 2.12.2.2.3 Each circuit to be provided to each End User will have 911 or E911 capability prior to the provision of service over that circuit; and
  - 2.12.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.12.3 of this Appendix Lawful UNE; and
  - 2.12.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.12.4 of this Appendix Lawful UNE; and
  - 2.12.2.2.6 For each 24 DS1 EELs, or other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 2.12.4 of this Appendix; and
  - 2.12.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, SBC MISSOURI shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 2.12.3 of this Appendix Lawful UNE. Section 2.12.2 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 2.12.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

- 2.12.3 A collocation arrangement meets the requirements of Section 2.12 of this Attachment Lawful UNE if it is:

- 2.12.3.1 Established pursuant to Section 251(c)(6) of the Act and located at SBC MISSOURI's premises within the same LATA as the End User's premises, when SBC MISSOURI is not the collocator; or
- 2.12.3.2 Located at a third party's premises within the same LATA as the End User's premises, when SBC MISSOURI is the collocator.
- 2.12.4 An interconnection trunk meets the requirements of Sections 2.12.2.2.5 and 2.12.2.2.6 of this Appendix Lawful UNE if CLEC will transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk, and the trunk is located in the same LATA as the End User premises served by the Included Arrangement.
- 2.12.5 For a new circuit to which Section 2.12.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.12.2.2.1 and Section 2.12.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.12.2.2.1 and/or Section 2.12.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC MISSOURI provisions such new circuit. CLEC must provide SBC MISSOURI with sufficient proof that such assignment and/or implementation has occurred by the end of such 30<sup>th</sup> day.
- 2.12.5.1 Section 2.12.5 does not apply to existing circuits to which Section 2.12.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.12.2.2.1 and Section 2.12.2.2.3 requirements for existing circuits at the time it initiates the ordering process).
- 2.12.6 CLEC hereby agrees that by submitting an order to SBC MISSOURI, for new or converted High-Capacity EELs CLEC is certifying that it is meeting the requirements of Section 2.12 as to such EEL(s) on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. Such certification-by-order shall have the same weight and effect as a separate certification and certification-by-order shall not diminish CLEC's obligation to comply with the criteria or certification requirements set forth in this Section 2.
  - 2.12.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with SBC MISSOURI.
- 2.12.7 In addition to any other audit rights provided for this Agreement and those allowed by law, SBC MISSOURI may obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance with this Section 2.12. For purposes of calculating and applying an "annual basis," it means for a State a consecutive 12-month period, beginning upon SBC MISSOURI's written notice that an audit will be performed for that State, subject to Section 2.12.7.4 of this Section.
  - 2.12.7.1 Unless otherwise agreed by the Parties (including at the time of the audit), the independent auditor shall perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria.
  - 2.12.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.12.
  - 2.12.7.3 Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.
  - 2.12.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 2.12, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services, (and SBC MISSOURI may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to SBC MISSOURI. In no event shall rates set under Section 252(d)(1) of the

Act apply for the use of any UNE for any period in which CLEC does not meet the conditions set forth in this Section 2.12 for that UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, e.g., SBC MISSOURI shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.

- 2.12.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.12, CLEC must reimburse SBC MISSOURI for the cost of the independent auditor and for SBC MISSOURI's costs in the same manner and using the same methodology and rates that SBC MISSOURI is required to pay CLEC's costs under Section 2.12.7.4.2.
- 2.12.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.12, SBC MISSOURI must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).
- 2.12.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.
- 2.12.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 2.12 in all cases and, further, the failure of SBC MISSOURI to require such compliance, including if SBC MISSOURI provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.12, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
- 2.13 Where processes for any Lawful UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, SBC MISSOURI will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.14 SBC MISSOURI will combine Lawful UNEs, combine Lawful UNE(s) with network elements possessed by CLEC, and/or Commingle only as set forth in this Appendix UNE.
- 2.15 The Parties intend that this Attachment Lawful UNEs contains the sole and exclusive terms and conditions by which CLEC will obtain Lawful UNEs from SBC MISSOURI. Accordingly, except as may be specifically permitted by this Attachment Lawful UNEs, and then only to the extent permitted, CLEC and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to lease any unbundled network element (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any SBC MISSOURI tariff, and agree not to so lease or attempt to so lease from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC MISSOURI to enforce the foregoing (including if SBC MISSOURI fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, SBC MISSOURI may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, SBC MISSOURI may process any such order as being submitted under this Appendix UNE and, further, may convert any element provided under tariff, to this Appendix UNE, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by CLEC.
- 2.16 Various subsections below list the Lawful Unbundled Network Elements that SBC MISSOURI has agreed, subject to the other terms and conditions in this Agreement, to make available to CLEC for the provision by CLEC of a telecommunications service. SBC MISSOURI will make additional Lawful Unbundled Network Elements available pursuant to the terms of Section 2.22 of this Attachment.



- 2.17 Subject to the terms herein, SBC MISSOURI is responsible only for the installation, operation and maintenance of the Lawful Unbundled Network Elements it provides. SBC MISSOURI is not otherwise responsible for the telecommunications services provided by CLEC through the use of those elements.
- 2.18 Except upon request, SBC MISSOURI will not separate requested Lawful Unbundled network elements that SBC MISSOURI currently combines.
- 2.19 Where Lawful unbundled Network elements provided to CLEC are dedicated to a single end user, if such elements are for any reason disconnected they will be made available to SBC MISSOURI for future provisioning needs, unless such element is disconnected in error. The CLEC agrees to relinquish control of any such Lawful UNE concurrent with the disconnection of a CLEC's end user customer's Service.
- 2.20 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.
- 2.21 SBC MISSOURI will provide CLEC notification
- 2.22 The Lawful UNEs provided pursuant to this Agreement will be available to SBC MISSOURI at times mutually agreed upon in order to permit SBC MISSOURI to make tests and adjustments appropriate for maintaining the services in satisfactory operating condition. No credit will be allowed for any interruptions involved during such tests and adjustments.
- 2.23 CLEC's use of any SBC MISSOURI Lawful Unbundled network element, or of its own equipment or facilities in conjunction with any SBC MISSOURI Lawful Unbundled network element, will not materially interfere with or impair service over any facilities of SBC MISSOURI, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, SBC MISSOURI may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the Lawful Unbundled Network element(s) causing the violation.
- 2.24 SBC MISSOURI and CLEC will negotiate to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters and catastrophic network failures (e.g., interoffice cable cuts and central office power failure) which affect their telecommunications services. These plans will provide for restoration and disaster recovery for CLEC customers at least equal to what SBC MISSOURI provides for its customers and will allow CLEC to establish restoration priority among CLEC customers consistent with applicable law.
- 2.25 Performance of Lawful Unbundled Network Elements
- 2.25.1 Each Lawful Unbundled Network Element provided by SBC MISSOURI to CLEC will meet applicable regulatory performance standards and be at least equal in quality and performance as that which SBC MISSOURI provides to itself. Each Lawful Unbundled Network Element will be provided in accordance with SBC MISSOURI Technical Publications or other written descriptions. Such publications will be shared with CLEC. CLEC may request, and SBC MISSOURI may provide, to the extent technically feasible, Lawful Unbundled Network Elements that are superior or lesser in quality than SBC MISSOURI provides to itself and such service will be requested pursuant to the BFR process.
- 2.25.2 SBC MISSOURI will provide a SBC MISSOURI Technical Publication or other written description for each Lawful Unbundled Network Element offered under this Agreement. The Technical Publication or other description for an Lawful Unbundled Element will describe the features, functions, and capabilities provided by the Lawful Unbundled Element as of the time the document is provided to CLEC.
- 2.25.3 Nothing in this Agreement will limit either Party's ability to modify its network through the incorporation of new equipment, new software or otherwise. Each Party will provide the other Party written notice of any such upgrades in its network which will materially impact the other Party's service consistent with the timelines established by the 47 CFR FCC §§ 51.325-335. CLEC will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement

of its telecommunications services which may be required because of changes in facilities, operations or procedure of SBC MISSOURI, minimum network protection criteria, or operating or maintenance characteristics of the facilities.

- 2.25.4 Where SBC MISSOURI will provide notification of network changes in accordance with 47 CFR §§ 51.325-335.
- 2.25.5 For Lawful Unbundled elements leased through the BFR Process, SBC MISSOURI, in its discretion, will determine whether it can offer the applicability of the preceding paragraph on a case by case basis.
- 2.25.6 For each Lawful Unbundled Network Element provided for in this Attachment, SBC MISSOURI Technical Publications or other written descriptions meeting the requirements of this section will be made available to CLEC not later than thirty (30) days after the Effective Date of this Agreement.
- 2.25.7 SBC MISSOURI will provide performance measurements as outlined in Attachment 17 under this Agreement. SBC MISSOURI will not levy a separate charge for providing this information.
- 2.26 If one or more of the requirements set forth in this Attachment are in conflict, the Parties will jointly elect which requirement will apply.
- 2.27 When CLEC leases Lawful unbundled Network Elements to provide interexchange services or exchange access services for intraLATA traffic originated by or terminating to CLEC local service customers, SBC MISSOURI will not collect access charges from CLEC or other IXCs except for charges for exchange access transport services that an IXC elects to lease from SBC MISSOURI.
- 2.28 CLEC will connect equipment and facilities that are compatible with the SBC MISSOURI Lawful Unbundled Network Elements and will use Network Elements in accordance with the applicable regulatory standards and requirements referenced in Section 2.17.
- 2.29 Fide Request (BFR)
- The sections below identify Lawful unbundled Network Elements and provide terms and conditions on which SBC MISSOURI will offer them to CLEC. Any request by CLEC for an additional new Lawful unbundled Network Element, combinations of Lawful Unbundled Network Element, or commingling of Lawful UNEs will be considered under the procedures set forth below. Where facilities and equipment are not available, CLEC may request and, to the extent required by law and as SBC MISSOURI may otherwise agree, SBC MISSOURI will provide Lawful Unbundled Network Elements through the Bona Fide Request (BFR) process.
- 2.29.1 SBC MISSOURI will promptly consider and analyze access to new unbundled Network Element with the submission of a Lawful Unbundled Network Element BFR hereunder. The Lawful Unbundled Network Element BFR process set forth herein does not apply to those services requested pursuant to FCC Report & Order and Notice of Proposed Rulemaking 91-141 (rel. Oct. 19, 1992) paragraph 259 and n. 603 and subsequent rulings.
- 2.29.2 CLEC may submit a Lawful Unbundled Network Element BFR in writing utilizing the Lawful Unbundled Network Element BFR Application Form, which - will include a technical description of each requested Lawful Unbundled Network Element, drawings when needed, locations where needed and the projected quantity of interconnection points ordered along with a three (3) year demand forecast.
- 2.29.3 CLEC may cancel, at no charge, its Lawful Unbundled Network Element BFR by providing written BFR Cancellation Notice to SBC MISSOURI after receiving the Preliminary analysis so long as SBC MISSOURI has not began working on CLEC's written request for the BFR Final Quote. However, in the event SBC MISSOURI receives a written BFR cancellation Notice from CLEC subsequent to SBC MISSOURI beginning work in response to CLECs written request for a BFR Final Quote then cancellation charges will apply. Cancellation charges will include time, labor, materials, and other actual costs incurred by SBC MISSOURI in connection with developing the BFR Final Quote.
- 2.29.4 Within ten (10) business days of receiving CLEC's Lawful Unbundled Network Element BFR Application Form SBC MISSOURI will acknowledge its receipt. In such written acknowledgement, SBC MISSOURI shall

advise CLEC of any further information needed for the Lawful Unbundled Network Element BFR Application Form to be accurate and complete. CLEC acknowledges that the time intervals applicable to the BFR process as set forth hereafter in this section, begin to apply once SBC MISSOURI has received a complete and accurate Lawful Unbundled Network Element BFR Application Form.

- 2.29.5 Except under extraordinary circumstances, within thirty (30) days of its receipt of an accurate and complete Lawful Unbundled Network Element BFR Application Form, SBC MISSOURI will respond by providing CLEC with a written Preliminary Analysis of such Lawful Unbundled Network Element. Lawful Unbundled Network Element BFR, SBC MISSOURI will provide to CLEC a preliminary analysis of such Lawful Unbundled Network Element BFR. The preliminary analysis will confirm that SBC MISSOURI will offer access to the Lawful Unbundled Network Element or will provide a detailed explanation that access to the Lawful Unbundled Network Element is not technically feasible and/or that the request does not qualify as a Lawful Unbundled Network Element that is required to be provided under the Act. If the receiving party does not accept the request within thirty (30) days, the issue may be presented to the Commission in accordance with the Arbitration Order dated December 11, 1996, in Case No. TO-97-40, as follows: the requesting party has twenty (20) days in which to file a petition with the Commission, seeking a determination that the receiving party be required to provide the unbundled element. The receiving party must respond within 20 days of the filing of the petition and demonstrate why it is technically infeasible to provide the UNE or why such provision violates network integrity.
- 2.29.6 Following receipt of the Preliminary Analysis CLEC may, at its discretion, provide written authorization to SBC MISSOURI to develop the Lawful Unbundled Network Element BFR Final Quote. CLEC must provide such written authorization within thirty (30) calendar days of receipt of the preliminary analysis. If written authorization is not provided to SBC MISSOURI within thirty (30) calendar days, the Lawful Unbundled Network Element BFR will be deemed cancelled, and CLEC will be required to submit a new Lawful Unbundled Network Element BFR thereafter should CLEC desire pursuit of a similar Lawful Unbundled Network Element.
- 2.29.7 As soon as feasible, but not more than ninety (90) calendar days after its receipt of written authorization to proceed with developing the Lawful Unbundled Network Element BFR Final Quote, SBC MISSOURI shall provide to CLEC an Lawful Unbundled Network Element BFR Final Quote that will include, at a minimum, a description of each Network Element, the availability, the applicable rates to include recurring and non-recurring costs, the installation intervals, Lawful Unbundled Network Element BFR development and processing costs and terms and conditions for amending the Agreement to order and provision the Lawful Unbundled Network Element BFR.
- 2.29.8 Within thirty (30) calendar days of its receipt of the Lawful Unbundled Network Element BFR Final quote, the requesting Party must either (1) confirm or cancel its Lawful Unbundled Network Element BFR pursuant to the terms and conditions of the Lawful Unbundled Network Element BFR Final quote or (2) submit any disputed issues with the Lawful Unbundled Network Element BFR Final Quote for Dispute Resolution as provided for in the General Terms and Conditions of this Agreement.
- 2.29.9 If a Party to an Lawful Unbundled Network Element BFR believes that the other Party is not requesting, negotiating or processing the Unbundled Network Element BFR in good faith, or disputes a determination, or price or cost quote, such Party may submit the matter for Dispute Resolution as provided for in the General Terms and Conditions of this Agreement. Regardless of Dispute Resolution status CLEC remains responsible for new Lawful Unbundled Network Element BFR Final Quote development costs up to an including when written cancellation requests is received by SBC MISSOURI until such time as Dispute Resolution to BFR is complete.
- 2.29.10 Whenever CLEC requests to lease a particular SBC MISSOURI Lawful Unbundled Network Element that is developed and operational at the time of the Lawful Unbundled Network Element BFR, but for which no Lawful unbundled Network Element price has been established or agreed by the Parties, CLEC's request will be considered as follows: SBC MISSOURI will provide a price quote for the Lawful Unbundled Element BFR, consistent with the Act, within -ten (10) business days following SBC MISSOURI's receipt of CLEC's request. If the Parties have not agreed on a price for the Lawful Unbundled Element within ten (10) days

following CLEC's receipt of the price quote, either Party may submit the matter for Dispute Resolution as provided for in the General Terms and Conditions of this Agreement.

- 2.29.11 After the Parties to an Lawful Unbundled Network Element BFR have reached agreement on terms, conditions and rates for the Lawful Unbundled Network Element BFR, they shall jointly cooperate in preparing and filing an amendment to this Agreement for the ordering, provisioning, and pricing of the Lawful Unbundled Network Element BFR. Parties agree that ordering of the New Lawful Unbundled Network Element BFR will not occur until Product has been developed, and an Amendment to the Parties ' interconnection agreement reflecting the appropriate rates, terms, and conditions, have been filed and approved by Commission.
- 2.29.11 CLEC shall not order and SBC MISSOURI shall not provision the Lawful Unbundled Network Element which is the subject of the BFR until: (1) the Interconnection Agreement Amendment is approved; and (2) full payment for Final Quote costs has been received.

### **3. NETWORK INTERFACE DEVICE**

- 3.1 Consistent with Section 2.1 of this Attachment Lawful UNE, SBC MISSOURI shall provide Lawful UNE Network Interface Device under the following terms and conditions in this subsection.
- 3.2 The Lawful UNE Network Interface Device (Lawful NID) is a cross-connect used to connect loop facilities to inside wiring. The fundamental function of the Lawful NID is to establish the official network demarcation point between a carrier and its end user customer. The Lawful NID contains the appropriate and accessible connection points or posts to which the service provider and the end user customer each make its connections. The Lawful UNE Network Interface Device (NID) is defined as any means of interconnection of End User premises wiring to SBC MISSOURI's distribution loop facilities, such as a cross connect device used for that purpose. Fundamentally, the Lawful UNE NID establishes the final (and official) network demarcation point between the loop and the End User's inside wire. Maintenance and control of the End User's inside wiring (on the End User's side of the Lawful NID) is under the control of the End User. Conflicts between telephone service providers for access to the End User's inside wire must be resolved by the End User. Pursuant to applicable FCC rules, SBC MISSOURI offers nondiscriminatory access to the Lawful NID on an unbundled basis to CLEC for the provision of a Telecommunications Service. CLEC access to the Lawful NID is offered as specified below.
- 3.3 CLEC personnel may connect to the End User's premise wiring at the SBC MISSOURI Lawful NID, as is, at no charge. Should CLEC request SBC MISSOURI to disconnect its loop from the customer's inside wire, SBC MISSOURI will charge CLEC a non recurring charge as reflected on Appendix Pricing Lawful UNE - Schedule of Prices labeled as "Disconnect Loop from Inside Wiring per Lawful NID." Any repairs, upgrades and rearrangements (other than loop disconnection addressed in the preceding sentence) required by CLEC will be performed by SBC MISSOURI based on Time and Materials charges as reflected on Appendix Pricing Lawful UNE - Schedule of Prices labeled "Time and Materials Charges."
- 3.4 To the extent a SBC MISSOURI Lawful NID exists, it will be the interface to customers' premises wiring unless CLEC and the customer agree to an interface that bypasses the SBC MISSOURI Lawful NID.
- 3.5 CLEC will provide its own Lawful NID and will interface to the customer's premises wiring through connections in the customer chamber, if available, of the SBC MISSOURI Lawful NID, unless CLEC and the customer agree to an alternate interface as provided for in Section 3.3.
- 3.6 With respect to multiple dwelling units or multiple-unit business premises, CLEC will provide its own Lawful NID, will connect directly with the customer's inside wire and will not require any connection to the SBC MISSOURI Lawful NID, unless such premises are served by "single subscriber" type Lawful NIDs.
- 3.7 The SBC MISSOURI Lawful NIDs that CLEC uses under this Attachment will be those installed by SBC MISSOURI to serve its customers.
- 3.8 CLEC will not attach to or disconnect SBC MISSOURI's ground. CLEC will not cut or disconnect SBC MISSOURI's loop from its protector. CLEC will not cut any other leads in the Lawful NID. CLEC will protect all disconnected leads with plastic sleeves and will store them within the Lawful NID enclosure. CLEC will tighten all screws or lugs loosened by CLEC in the Lawful NID's enclosure and replace all protective covers.
- 3.9 If CLEC requests a different type of Lawful NID not included with the loop, SBC MISSOURI will consider the requested type of Lawful NID to be facilitated via the Bona Fide Request (BFR) Process.

### **4. LAWFUL UNE LOCAL LOOP**

- 4.1 Consistent with Section 2.1 of this Attachment Lawful UNE, SBC MISSOURI shall provide Lawful UNE Local Loop under the following terms and conditions in this subsection.
- 4.2 Pursuant to applicable FCC rules, a local loop network element is a transmission facility between a distribution frame (or its equivalent) in an SBC MISSOURI Central Office and the loop demarcation point at an End User customer premises. Therefore, consistent with the applicable FCC rules, SBC MISSOURI will make available the Lawful UNE local loops set forth herein below between a distribution frame (or its

equivalent) in an SBC MISSOURI Central Office and the loop demarcation point at an End User customer premises. The Parties acknowledge and agree that SBC MISSOURI shall not be obligated to provision any of the Lawful UNE local loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE local loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC MISSOURI. The Lawful UNE local loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing). The Lawful UNE Local Loop includes, but is not limited to are copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g. DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services), Lawful UNE DS1 Digital Loops (where they have not been Declassified and subject to caps set forth in 4.3.4.4.1 and Lawful UNE DS3 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 4.3.5.4.1), where such loops are deployed and available in SBC MISSOURI wire centers. CLEC agrees to operate each Lawful UNE local loop type within the technical descriptions and parameters accepted within the industry.

- 4.2.1 When a Lawful UNE local loop is ordered to a high voltage area, the Parties understand and agree that the Lawful UNE local loop will require a High Voltage Protective Equipment (HVPE) (e.g., a positron), to ensure the safety and integrity of the network, the Parties' employees and/or representatives, and the CLEC's end-user customer. Therefore, any request by CLEC for a Lawful UNE local loop to a high voltage area will be submitted by CLEC to SBC MISSOURI via the BFR process and CLEC shall be required to pay SBC MISSOURI for any HVPE that is provisioned by SBC MISSOURI to CLEC in connection with the CLEC's Lawful UNE local loop order to the high voltage area.
- 4.3 SBC MISSOURI will provide at the rates, terms, and conditions set out in Appendix Pricing Lawful UNE - Schedule of Prices the types of unbundled loops. When CLEC orders an lawful unbundled loop, CLEC will be provided a termination on whatever Lawful NID, if any, connects the loop to the customer premises, without additional charge.
- 4.3.1 The 2-Wire analog loop supports analog voice frequency, voice band services with loop start signaling within the frequency spectrum of approximately 300 Hz and 3000 Hz.
- 4.3.1.1 SBC MISSOURI will offer 5 dB conditioning on a 2-wire analog loop as the standard conditioning option available.
- 4.3.1.2 If CLEC requests one or more Lawful UNE loops serviced by Integrated Digital Loop Carrier (IDLC) SBC MISSOURI will, where available, move the requested loop(s) to a spare, existing all-copper or universal digital loop carrier Lawful UNE loop at no additional charge to CLEC. If however, no spare Lawful UNE loop is available, as defined above, SBC MISSOURI will within two (2) business days of CLEC's request, notify CLEC of the lack of available facilities.
- 4.3.2 The 4-Wire analog loop provides a non-signaling voice band frequency spectrum of approximately 300 Hz to 3000 Hz. The 4-Wire analog loop provides separate transmit and receive paths.
- 4.3.3 The 2-Wire digital loop 160 Kbps supports Basic Rate ISDN (BRI) digital exchange services. The 2-Wire digital loop 160 Kbps supports usable bandwidth up to 160 Kbps.
- 4.3.4 DS1 Digital Loop
- 4.3.4.1 The (DS1) Loop is a transmission facility (1.544 Mbps) that will support DS1 service including Primary Rate ISDN (PRI). The DS1 loop supports usable bandwidth up to 1.544 Mbps.
- 4.3.4.2 DS1 Lawful UNE Digital Loops will be offered and/or provided only where such Loops have not been Declassified.

- 4.3.4.3 The procedures set forth in 4.4, below will apply in the event DS1 Digital Loops (DS1) are or have been Declassified.
- 4.3.4.4 DS1 Loop “Caps
- 4.3.4.4.1 SBC MISSOURI is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE loops per requesting carrier to any single building in which DS1 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Loops once CLEC has already obtained ten DS1 Lawful UNE Loops at the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC MISSOURI’s option it may accept the order, but convert any requested DS1 Lawful UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Loop(s) as of the date of provisioning.
- 4.3.5 DS3 Digital Loops
- 4.3.5.1 The DS3 loop provides a digital, 45 Mbps transmission facility from the SBC MISSOURI Central Office to the end user premises.
- 4.3.5.2 DS3 Lawful UNE loops will be offered and/or provided only where such Loops have not been Declassified.
- 4.3.5.3 The procedures set forth in Section 4.4, below will apply in the event DS3 Digital Loops are or have been Declassified.
- 4.3.5.4 DS3 Loop “Caps”
- 4.3.5.4.1 SBC MISSOURI is not obligated to provide to CLEC more than one (1) DS3 Lawful UNE loop per requesting carrier to any single building in which DS3 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Loops once CLEC has already obtained one DS3 Lawful UNE loop to the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC MISSOURI’s option it may accept the order, but convert any requested DS3 Lawful UNE Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Loop(s) as of the date of provisioning.
- 4.4 Declassification Procedure
- 4.4.1 DS1. Subject to the cap described in Section 4.3.4.4, SBC MISSOURI shall provide CLEC with access to a DS1 Lawful UNE Digital Loop, where available, to any building *not* served by a wire center with 60,000 or more business lines and four or more (4) fiber-based collocators. Once a wire center exceeds these thresholds, no future DS1 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 4.4.2 DS3. Subject to the cap described in Section 4.3.5.4, SBC MISSOURI shall provide CLEC with access to a DS3 Lawful UNE Digital Loop, where available, to any building *not* served by a wire center with at least 38,000 business lines and at least four (4) fiber-based collocators. Once a wire center exceeds these thresholds, no future DS3 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS3 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified, and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).
- 4.4.3 Effect on Embedded Base. Upon Declassification of DS1 Digital Loops or DS3 Digital Loops already purchased by CLEC as Lawful UNEs under this Agreement, SBC MISSOURI will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 “Notice and Transition Procedure.”

- 4.4.3.1 Products provided by SBC MISSOURI in conjunction with such Loops (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Loops are Declassified.
- 4.5.2 SBC MISSOURI shall make routine network modifications to Lawful UNE Local Loop facilities used by requesting telecommunications carriers where the requested Lawful UNE Local Loop facility has already been constructed. SBC MISSOURI shall perform routine network modifications to Lawful UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
- 4.5.2.1 A routine network modification is an activity that SBC MISSOURI regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own retail customers under the same conditions and in the same manner that SBC MISSOURI does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC MISSOURI will place drops in the same manner as it does for its own customers.
- 4.5.3 Routine network modifications do not include constructing new Lawful UNE loops; installing new cable; securing permits, rights-of-way; constructing and/or placing new manholes or conduits; installing new terminals; removing or reconfiguring packetized transmission facility. SBC MISSOURI is not obligated to perform those activities for a requesting telecommunications carrier.
- 4.5.3.1 SBC MISSOURI shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC MISSOURI's retail customers.
- 4.5.3.2 This Agreement does not require SBC MISSOURI to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent SBC MISSOURI has not already done so; remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path; reconfigure a copper or fiber packetized transmission facility to provide time division multiplexing-based features, functions and capabilities; to deploy TDM voice grade transmission capacity into new or existing networks that never had TDM capability; nor does this Agreement prohibit SBC MISSOURI from upgrading a customer from a TDM-based service to a packet switched or packet transmission service, or removing copper loops or subloops from the network, provided SBC MISSOURI complies with the copper loop or subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii).
- 4.5.3.3 Notwithstanding anything to the contrary herein, SBC MISSOURI's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC MISSOURI's hybrid loops, only with respect to any existing capabilities of SBC MISSOURI's hybrid loops. SBC MISSOURI has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.
- 4.5.4 SBC MISSOURI shall provide routine network modifications at the rates, terms and conditions set out in this Attachment and in Appendix Pricing. SBC MISSOURI will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which SBC MISSOURI is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all SBC MISSOURI include, but are not limited to: (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), and (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf. A rate for any routine network modification shown as "ICB" in Appendix Pricing indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed or approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and



shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.

- 4.6 Lawful UNE DS1 and DS3 Loops may not be employed in combination with transport facilities to replace Special Access services or facilities, except consistently with the other terms and conditions of this Agreement, including but not limited to, Section 2.10 of this Appendix.
- 4.7 xDSL Subloop is as defined in the xDSL and Line Splitting Appendix, if any, and will be available to CLEC in the SBC MISSOURI states in those instances where CLEC has an approved and effective xDSL and Line Splitting Appendix as a part of this Agreement. In addition to the provisions set forth in the xDSL and Line Splitting Appendix, the xDSL Subloop is subject to the subloop terms and conditions set forth in this Section 5, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the xDSL and Line Splitting Appendix as to the xDSL Subloop and the subloop provisions set forth in this Section 5, the subloop provisions set forth in Section 5 shall control.

## **5. LAWFUL UNE SUBLOOP**

- 5.1 SBC MISSOURI will provide Lawful UNE Subloops under the following terms and conditions in this subsection.
- 5.2 A Lawful UNE subloop is a smaller included segment of SBC MISSOURI's Lawful UNE local loop plant, i.e., a portion of the Lawful UNE loop from some technically accessible terminal beyond SBC MISSOURI's central office and the network demarcation point, including that portion of the Lawful UNE loop, if any, which SBC MISSOURI owns and controls inside the End User premises.
- 5.3 Definitions pertaining to the Lawful UNE Subloop:
- 5.3.1 Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point. Terminals differ from splice cases, which are inaccessible because the case must be breached to reach the wires within.
- 5.3.2 "Dead Count" refers to those binding posts which have cable spliced to them but which cable is not currently terminated to any terminal to provide service.
- 5.3.3 "Demarcation Point" is defined as the point on the loop where the ILEC's control of the wire ceases and the subscriber's control (or on the case of some multiunit premises, the landlord's control) of the wire begins.
- 5.3.4 "Digital Lawful UNE Subloop" may be deployed on non-loaded copper cable pairs, channels of a digital loop carrier system, channels of a fiber optic transport system or other technologies suitable for the purpose of providing 160 Kbps Lawful UNE subloop transport.
- 5.3.5 "Distribution Cable" is defined as the cable from the SAI/FDI to the terminals from which an end user can be connected to the ILEC's network.
- 5.3.6 "MTE" for the purpose of Term To NID Lawful UNE subloop. "MTE" is a Multi Tenant Environment for buildings with exterior or interior mounted terminals.
- 5.3.7 "Network Terminating Wire (NTW)" is the service wire that connects the ILEC's distribution cable to the NID at the demarcation point.
- 5.3.8 "SAI/FDI-to-Term Lawful UNE Subloop" is that portion of the Lawful UNE Loop from the SAI/FDI to an accessible terminal.

- 5.3.9 "SAI/FDI-to-NID Lawful UNE Subloop" is that portion of the Lawful UNE Loop from the SAI/FDI to the Network Interface Device (NID), which is located on an end user's premise.
- 5.3.10 "SPOI" is defined as a Single Point of Interconnection. SBC MISSOURI will construct a SPOI at CLEC expense only to those multiunit premises where SBC MISSOURI has distribution facilities to the premises and SBC MISSOURI either owns, controls, or leases the inside wire, if an, at such premises. If SBC MISSOURI has no facilities which it owns, controls or leases at a multiunit premises through which it serves, or can serve, customers at such premises, it is not obligated to construct a SPOI. SBC MISSOURI's obligation to build a SPOI for multiunit premises only arises when CLEC indicates that it will place an order for an Lawful UNE subloop network element via a SPOI.
- 5.3.11 "SAI/FDI" is defined as the point in the ILEC's network where feeder cable is cross connected to the distribution cable. "SAI" is Serving Area Interface. "FDI" is Feeder Distribution Interface. The terms are interchangeable.
- 5.3.12 "Term-to-NID Lawful UNE Subloop" is that portion of the loop from an accessible terminal to the NID, which is located at an end user's premise. Term-to-NID includes use of the Network Terminating Wire (NTW).
- 5.4 SBC MISSOURI will offer the following Lawful UNE subloop types:
- 5.4.1 2-Wire Analog Lawful UNE Subloop provides a 2-wire (one twisted pair cable or equivalent) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).
- 5.4.2 4-Wire Analog Lawful UNE Subloop provides a 4-wire (two twisted pair cables or equivalent, with separate transmit and receive paths) capable of transporting analog signals in the frequency range of approximately 300 to 3000 hertz (voiceband).
- 5.4.3 Lawful UNE xDSL Subloop is as defined in the xDSL and Line Splitting Appendix and will be available to CLEC in the SBC MISSOURI states in those instances where CLEC has an approved and effective xDSL and Line Splitting Appendix as a part of this Agreement. In addition to the provisions set forth in the xDSL and Line Splitting Appendix, the Lawful UNE xDSL Subloop is subject to the Lawful UNE subloop terms and conditions set forth in this Appendix, the collocation provisions set forth elsewhere in this Agreement and the rates set forth in the Appendix Pricing. If there is any conflict between the provisions set forth in the xDSL and Line Splitting Appendix as to the Lawful UNE xDSL Subloop and the Lawful UNE subloop provisions set forth in this Appendix, the Lawful UNE subloop provisions set forth in this Appendix shall control.
- 5.4.4 As no other type of Subloop constitutes a Lawful UNE subloop, SBC MISSOURI is not obligated under this Section 251/252 Agreement to provide any other type of subloop including dark fiber subloops. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC MISSOURI provides a subloop(s) that is not described or provided for in this Agreement, SBC MISSOURI may, at any time, even after the subloop(s) has been provided to CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC MISSOURI to refuse to provide, including if SBC MISSOURI provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
- 5.5 Lawful UNE Subloops are provided "as is" unless CLEC requests loop conditioning on xDSL Lawful UNE Subloops for the purpose of offering advanced services. xDSL Lawful UNE subloop conditioning will be provided at the rates, terms, and conditions set out in the Appendix Pricing.
- 5.6 If a Term to NID Lawful UNE Subloop has been disconnected and thus an end-user is no longer receiving service via that Lawful UNE Subloop, and such Lawful UNE Subloop has been determined to be a non-defective pair, then that Lawful UNE Subloop would be considered an existing spare portion of the loop, based on a first come first served basis.

5.7 Twisted-pair Copper Lawful UNE Subloops:

5.7.1 Access to terminals for twisted-pair copper Lawful UNE subloops is defined to include:

- any technically feasible point near the customer premises accessible by a cross-connect (such as the pole or pedestal, the NID, or the minimum point of entry (MPOE) to the customer premises),
- the Feeder Distribution Interface (FDI) or Serving Area Interface (SAI), where the “feeder” leading back to the central office and the “distribution” plant branching out to the subscribers meet,
- the Terminal (underground or aerial).

5.8 CLEC may request access to the following twisted-pair copper Lawful UNE subloop segments:

FROM:	TO:
1. Serving Area Interface or Feeder Distribution Interface	Terminal
2. Serving Area Interface or Feeder Distribution Interface	Network Interface Device
3. Terminal	Network Interface Device
4. NID	Stand Alone
5. SPOI (Single Point of Interface)	Terminal
6. SPOI (Single Point of Interface)	Network Interface Device

5.9 Provisioning

5.9.1 Connecting Facility Arrangement (CFA) assignments must be in-place prior to ordering and assigning specific Lawful UNE subloop circuit(s).

5.9.2 Spare Lawful UNE subloop(s) will be assigned to CLEC only when an LSR/ASR is processed. LSR/ASRs will be processed on a “first come first serve” basis.

5.10 Maintenance

5.10.1 The Parties acknowledge that by separating switching, feeder plant and distribution plant, the ability to perform mechanized testing and monitoring of the Lawful UNE subloop from the SBC MISSOURI switch/testing equipment will be lost.

5.10.2 CLEC shall isolate trouble to the SBC MISSOURI Lawful UNE Subloop portion of the CLEC’s service before reporting trouble to SBC MISSOURI.

5.10.3 SBC MISSOURI shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC dispatches SBC MISSOURI on a trouble report and the fault is determined to be in the CLEC’s portion of the loop. Such charges may be found in the individual state pricing appendices or tariffs.

5.10.4 Once all Lawful UNE subloop access arrangements have been completed and balance of payment due SBC MISSOURI is received, the CLEC may place a LSR for Lawful UNE subloops at this location. Prices at which SBC MISSOURI agrees to provide CLEC with Lawful Unbundled Network Elements (Lawful UNE) are contained in the Appendix Pricing.

5.10.5 In the event of Catastrophic Damage to the RT, SAI/FDI, Terminal, or NID where CLEC has a SAA, SBC MISSOURI repair forces will restore service in a non-discriminatory manner which will allow the greatest number of all customers to be restored in the least amount of time. Should the CLEC cabling require replacement, SBC MISSOURI will provide prompt notification to CLEC for CLEC to provide the replacement cable to be terminated as necessary.

5.11 Lawful UNE Subloop Access Arrangements

5.11.1 Prior to ordering Lawful UNE subloop facilities, CLEC will establish Collocation using the Collocation process as set forth in the Collocation Appendix, or will establish a Lawful UNE Subloop Access Arrangement

- utilizing the Special Construction Arrangement (SCA), either of which are necessary to interconnect to the SBC MISSOURI Lawful UNE subloop network.
- 5.11.2 The space available for collocating or obtaining various Lawful UNE Subloop Access Arrangements will vary depending on the existing plant at a particular location. The CLEC will initiate an SCA by submitting a Lawful UNE Sub-loop Access Arrangement Application.
  - 5.11.3 Upon receipt of a complete and correct application, SBC MISSOURI will provide to CLEC within 30 days a written estimate for the actual construction, labor, materials, and related provisioning costs incurred to fulfill the SCA on a Time and Materials basis. When CLEC submits a request to provide a written estimate for Lawful UNE sub-loop(s) access, appropriate rates for the engineering and other associated costs performed will be charged.
  - 5.11.4 The assignment of Lawful UNE subloop facilities will incorporate reasonable practices used to administer outside plant loop facilities. For example, where SAI/FDI interfaces are currently administered in 25 pair cable complements, this will continue to be the practice in assigning and administering Lawful UNE subloop facilities.
  - 5.11.5 Lawful UNE Subloop inquiries do not serve to reserve Lawful UNE subloop(s).
  - 5.11.6 Several options exist for Collocation or Lawful UNE Subloop Access Arrangements at technically feasible points. Sound engineering judgment will be utilized to ensure network security and integrity. Each situation will be analyzed on a case-by-case basis.
  - 5.11.7 CLEC will be responsible for obtaining rights of way from owners of property where SBC MISSOURI has placed the equipment necessary for the SAA prior to submitting the request for SCA.
  - 5.11.8 Prior to submitting the Lawful UNE Sub-loop Access Arrangement Application for SCA, the CLEC should have the "Collocation" and "Poles, Conduit, and Row" appendices in the Agreement to provide the guidelines for both CLEC and ILEC to successfully implement Lawful UNE subloops, should collocation, access to poles/conduits or rights of way be required.
  - 5.11.9 Except as set forth below in this Section 5.11.9, construction of the Lawful UNE Subloop Access Arrangement shall be completed within 90 days of CLEC submitting to SBC MISSOURI written approval and payment of not less than 50% of the total estimated construction costs and related provisioning costs after an estimate has been accepted by the carrier and before construction begins, with the balance payable upon completion. SBC MISSOURI will not begin any construction under the SCA until the CLEC has provided proof that it has obtained necessary rights of way as defined in Section 5.11.7. In the event CLEC disputes the estimate for an SAA in accordance with the dispute resolution procedures set forth in the General Terms and Conditions, Section 10, of this Agreement, SBC MISSOURI will proceed with construction of the SAA upon receipt from CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC upon completion of the SAA. Such payments may be subject to any "true-up," if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.
  - 5.11.10 Upon completion of the construction activity, the CLEC will be allowed to test the installation with a SBC MISSOURI technician. If the CLEC desires test access to the SAA, the CLEC should place its own test point in its cable prior to cable entry into SBC MISSOURI' interconnection point.
  - 5.11.11 A non-binding CLEC forecast shall be required as a part of the request for SAA, identifying the Lawful UNE subloops arrangements to each subtending SAI. This will allow SBC MISSOURI to properly engineer access to each SAI and to ensure SBC MISSOURI does not provide more available terminations than the CLEC expects to use.
  - 5.11.12 In order to maximize the availability of terminations for all CLECs, the CLEC shall provide CFA for their Lawful UNE subloop pairs utilizing the same 25-pair binder group. The CLEC would begin utilizing the second 25-pair binder group once the first 25-pair binder group reached its capacity.

- 5.11.13 Unused CLEC terminations (in normal splicing increments such as 25-pair at a SAI/FDI) which remain unused for a period of one year after the completion of construction shall be subject to removal at CLEC expense.
- 5.11.14 In the event a CLEC elects to discontinue use of an existing SAA, or abandons such arrangement, CLEC shall pay SBC MISSOURI for removal of their facilities from the SAA.
- 5.12 Lawful UNE Subloop Access Arrangement (SAA) Access Points:
  - 5.12.1 SAI/FDI or Terminal
    - 5.12.1.1 CLEC cable to be terminated in an SBC MISSOURI SAI/FDI, or Terminal, shall consist of 22 or 24-gauge copper twisted pair cable bonded and grounded to the power company Multi Grounded Neutral (MGN). Cable may be filled if buried or buried to aerial riser cable. CLEC's Aerial cables should be aircore.
    - 5.12.1.2 The CLEC may elect to place their cable to within 3 feet of the SAA site and coil up an amount of cable, defined by the engineer in the design phase, that SBC MISSOURI will terminate on available binding posts in the SAI/FDI or Terminal.
    - 5.12.1.3 The CLEC may "stub" up a cable at a prearranged meet point, defined during the engineering site visit, and SBC MISSOURI will stub out a cable from the SAI/FDI or Terminal, which SBC MISSOURI will splice to the CLEC cable at the meet point.
    - 5.12.1.4 Dead counts will be offered as long as they have not been placed for expansion purposes planned within the 12-month period beginning on the date of the inquiry LSR.
- 5.13 Relocation of Existing ILEC/CLEC Facilities involved in a SAA at a RT, SAI/FDI, Terminal or NID:
  - 5.13.1 SBC MISSOURI shall notify CLEC of pending relocation as soon as SBC MISSOURI receives such notice.
  - 5.13.2 CLEC shall notify SBC MISSOURI of its intentions to remain, or not, in the SAA by way of a new Lawful UNE Subloop Access Arrangement Application for a new SCA.
  - 5.13.3 SBC MISSOURI shall then provide the CLEC an estimate to terminate their facilities as part of the relocation of the site including the applicable SAA. This process may require a site visit with the CLEC and SBC MISSOURI engineer.
  - 5.13.4 CLEC shall notify SBC MISSOURI of acceptance or rejection of the new SCA within 10 business days of its receipt of SBC MISSOURI's estimate.
  - 5.13.5 Upon acceptance of the SBC MISSOURI estimate, CLEC shall pay at least 50% of the relocation costs at the same time as they notify SBC MISSOURI of their acceptance of estimate costs.
  - 5.13.6 Should CLEC decide not to continue the SAA, CLEC will notify SBC MISSOURI as to the date that SBC MISSOURI may remove CLEC's facilities from that SAA. CLEC will pay SBC MISSOURI for all costs associated with the removal of the CLEC's SAA.
  - 5.13.7 In the event that CLEC does not respond to SBC MISSOURI in time to have their facilities relocated, SBC MISSOURI shall move CLEC facilities and submit a bill for payment to the CLEC for the costs associated with the relocation. Should CLEC elect not pay this bill, then CLEC facilities will be removed from the site upon 30 days notice to the CLEC.
- 5.14 The CLEC may "stub" up a cable at a prearranged meet point, defined during the engineering site visit, and SBC MISSOURI will stub out a cable from the RT, which SBC MISSOURI will splice to the CLEC cable at the meet point.
- 5.15 Establishment of Intermediary Box for CLEC Access to Term to NID MTE Lawful UNE Subloop Segment
  - 5.15.2.1 As an alternative to the establishment of a Lawful UNE Subloop Access Arrangement in those instances where CLEC wishes to access/lease SBC MISSOURI Term to NID Lawful UNE subloop segments in order to serve its end-user customers at MTEs in SBC MISSOURI ("Term to NID MTE Lawful UNE Subloop Segments"), CLEC may place, own and manage, for its own use, an intermediary box, which would provide

CLEC with access to a Term to NID MTE Lawful UNE Subloop Segment cross-connect leased from SBC MISSOURI within the intermediary box (in order to obtain access to SBC MISSOURI Term to NID MTE Lawful UNE Subloop Segments). In the event CLEC wishes to access SBC MISSOURI Term to NID MTE Lawful UNE Subloop Segments via the establishment of an intermediary box, the following rates, terms and conditions shall apply:

- 5.15.2.1.1 CLEC would manage the process for placing its own intermediary box, including, without limitation, coordination with the property owner and/or management. CLEC may, at its discretion, choose to retain ownership in whole or to share ownership of the intermediary box with other CLECs. Intermediary box shall be placed no more than two feet from the SBC terminal.
- 5.15.2.1.2 The intermediary box shall contain blocks that meet SBC MISSOURI's published industry standards for the placement of services and facilities and should be labeled with CLEC's ACNA to enable the SBC MISSOURI technician the ability to run jumper/cross connect from SBC MISSOURI terminal to the intermediary box.
- 5.15.2.1.3 CLEC agrees that the SBC MISSOURI technician shall run the jumper/cross-connect from SBC MISSOURI's serving terminal to CLEC's intermediary box, in order for CLEC to access SBC MISSOURI Term to NID MTE Lawful UNE Subloop Segments in SBC MISSOURI. For security and safety, SBC will incase the cross connect in conduit, a protective covered common path, between the SBC terminal and the CLEC's intermediary box.
- 5.15.2.1.4 CLEC must have in place Connecting Facility Arrangement (CFA) assignments prior to ordering and assigning specific Term to NID MTE Lawful UNE Subloop Segments from SBC MISSOURI.
- 5.15.2.1.5 Following CLEC's provisioning, placement, and completion of Connecting Facility Arrangement Assignments ("CFA") data submission to SBC MISSOURI associated with the intermediary box, CLEC would place orders and schedule activities related to access to the Term to NID MTE Lawful UNE Subloop Segment including, without limitation: transferring the end-user customer's service from SBC MISSOURI to CLEC, providing SBC MISSOURI with CFA prior to ordering and the assigning of a specific Term to NID MTE Lawful UNE Subloop Segment(s).
- 5.15.2.1.6 The ordering procedures for the Term to NID MTE Lawful UNE Subloop Segment will be the same as those that apply to Lawful UNE subloops today and shall be submitted to SBC MISSOURI by CLEC via a Local Service Request ("LSR").
- 5.15.2.1.7 SBC MISSOURI will upon receipt of the LSR from CLEC for a Term to NID MTE Lawful UNE Subloop Segment, process the order and place the jumper/cross connect to the CFA provided by the CLEC on the LSR, from the SBC MISSOURI terminal to the CLEC intermediary box. SBC MISSOURI must have access to the intermediary box for completion of the order.
- 5.15.2.2 In connection with the MTE intermediary box for CLEC access to Term to NID MTE Lawful UNE Subloop Segments in 12 State only, CLEC may elect to lease from SBC MISSOURI Term to NID MTE Lawful UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE Lawful UNE Subloop Segment" In the event CLEC wishes to lease the Term to NID MTE Lawful UNE Subloop Segment from SBC MISSOURI in lieu of SBC MISSOURI's standard Term to NID Lawful UNE subloop segment addressed in this Section 5.15.2.2, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Lawful UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Lawful UNE Subloop Segment.
- 5.15.3 Establishment of Term to NID MTE Lawful UNE Subloop Segment When no Intermediary Box is installed
  - 5.15.3.1 In those instances where CLEC elects not to install an intermediary box or to have SBC MISSOURI install an intermediary box pursuant to the SAA process outlined herein above, the CLEC may still lease from SBC MISSOURI Term to NID MTE Lawful UNE Subloop Segments which do not include traditional testing and the associated labor, at the recurring and non-recurring rates set forth in Appendix Pricing for the "Term to NID MTE Lawful UNE Subloop Segment." In the event CLEC wishes to lease the Term to NID MTE Lawful

UNE Subloop Segment from SBC MISSOURI in lieu of SBC MISSOURI's standard Term to NID Lawful UNE subloop segment addressed in Section 5.15.2.2 above, CLEC understands and agrees no performance measures and/or remedies shall apply to the Term to NID MTE Lawful UNE Subloop Segment as a result of the elimination of associated testing and reduction in functionality associated with the Term to NID MTE Lawful UNE Subloop Segment. In such cases, SBC MISSOURI will provide CLEC with access to the Term To NID MTE Lawful UNE subloop via a cross connect. The SBC technician will tag appropriately and will leave up to one foot of exposed wire at SBC 12STATE terminal. The cross connect would then be terminated by the CLEC technician in the CLEC terminal, at a time of CLEC's own choosing. For security and safety, SBC will incase the cross connect in conduit, a protective covered common path, between the SBC terminal and the CLEC's terminal.

- 5.15.3.2 If CLEC elects this option to obtain access to the Term To NID Lawful UNE subloop in an MTE Environment, neither the SBC MISSOURI SAA process nor the intermediary box option would be required. Because the CLEC would have full responsibility for terminating the SBC MISSOURI cross-connect, SBC MISSOURI could not require any CFA information from CLEC.

## **6. ENGINEERING CONTROLLED SPLICE (ECS)**

- 6.1 SBC MISSOURI will make available an Engineering Controlled Splice (ECS), which will be owned by SBC MISSOURI, for CLECs to gain access to Lawful UNE subloops at or near remote terminals.
- 6.2 The ECS shall be made available for Lawful UNE Subloop Access Arrangements (SAA) utilizing the Special Construction Arrangement (SCA).
- 6.2.1 CLEC requesting such a SCA shall pay all of the actual construction, labor, materials and related provisioning costs incurred to fulfill its SCA on a Time and Materials basis, provided that SBC MISSOURI will construct any Lawful UNE Subloop Access Arrangement requested by a telecommunications carrier in a cost-effective and efficient manner. If SBC MISSOURI elects to incur additional costs for its own operating efficiencies and that are not necessary to satisfy an SCA in a cost-effective and efficient manner, the requesting telecommunications carrier will not be liable for such extra costs.
- 6.2.2 CLEC shall be liable only for costs associated with cable pairs that it orders to be presented at an engineering controlled splice (regardless of whether the requesting carrier actually utilizes all such pairs), even if SBC MISSOURI places more pairs at the splice.
- 6.2.3 Although SBC MISSOURI will construct the engineering controlled splice, the ECS maybe owned by SBC MISSOURI or the CLEC (depending on the specific arrangement) at the option of SBC MISSOURI.
- 6.2.4 If more than one requesting telecommunications carrier obtains space in expanded remote terminals or adjacent structures and obtains an SAA with the new copper interface point at the ECS, the initial telecommunications carrier which incurred the costs of construction of the engineering controlled splice and/or additional copper shall be reimbursed those costs in equal proportion to the space or lines used by the requesting carriers.
- 6.2.5 SBC MISSOURI may require a separate SCA for each remote terminal site.
- 6.2.6 Except as set forth below in this Section 6.2.6, written acceptance and at least 50% of payment for the SCA must be submitted at least 90 days before access to the copper Lawful UNE subloop is to be provisioned by SBC MISSOURI. If an augment of cabling is required between the ECS and the SAI, the interval for completion of the SCA will be determined on an individual case basis. SBC MISSOURI will not begin any construction of the ECS until the CLEC has provided proof that it has obtained the necessary rights of way. In the event CLEC disputes the estimate for the ECS in accordance with the dispute resolution procedures set forth in this Agreement, SBC MISSOURI will proceed with construction of the ECS upon receipt from CLEC of notice of the dispute and not less than fifty percent (50%) of the total estimated costs, with the balance payable by CLEC upon completion of the ECS. Such payments may be subject to any "true-up," if applicable, upon resolution of the dispute in accordance with the Dispute Resolution procedures.

- 6.3 CLECs will have two (2) options for implementing the ECS: a “Dedicated Facility Option” (DFO) and a “Cross-connected Facility Option” (CFO).
- 6.3.1 Dedicated Facility Option (DFO)
- 6.3.1.1 CLEC may request SBC MISSOURI splice the existing cabling between the ECS and the SAI to the CLEC’s SAA facility. This facility will be “dedicated” to the CLEC for subsequent Lawful UNE subloop orders.
- 6.3.1.2 CLEC must designate the quantity of Lawful UNE subloops they desire to access via this spliced, dedicated facility, specified by subtending SAI.
- 6.3.1.3 CLECs will compensate SBC MISSOURI for each of the dedicated Lawful UNE subloop facilities, based on recurring Lawful UNE subloop charges, for the quantity of Lawful UNE subloops dedicated to the CLEC between the ECS and the SAI.
- 6.3.2 Cross-connected Facility Option (CFO)
- 6.3.2.1 CLEC may request SBC MISSOURI build an ECS cross-connect junction on which to terminate CLEC’s SAA facility.
- 6.3.2.2 The SCA associated with this option will include the charges associated with constructing the cross-connect device, including the termination of SBC MISSOURI cabling between the ECS and the RT and/or SAI, and the inventorying of that SBC MISSOURI cabling.
- 6.3.2.3 CLEC must designate the quantity of Lawful UNE subloops they desire to access via this cross-connectable, dedicated facility, specified by subtending SAI.
- 6.3.2.4.1 CLECs will compensate SBC MISSOURI for the charges incurred by SBC MISSOURI derived from the CLEC’s request for the SCA.
- 6.4 The introduction of an ECS creates the following additional copper Lawful UNE Subloop segments:
- | FROM:  | TO:   |
|--------|---|
| 1) ECS | Serving Area Interface or Feeder Distribution Interface |
| 2) ECS | Terminal  |
| 3) ECS | NID   |



## 7. DARK FIBER DEDICATED TRANSPORT

- 7.1 Subject to Section 2 of this Appendix Lawful UNEs, SBC MISSOURI shall provide Lawful UNE Dedicated Transport Dark Fiber under the following terms and conditions in this subsection. SBC MISSOURI is not required to provide Loop or Sub Loop Dark Fiber on an unbundled basis. (For definitional purposes only, Loop and Sub Loop Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications service.)
- 7.2 In SBC MISSOURI, Dedicated Transport Dark Fiber is deployed, unlit optical fiber within SBC MISSOURI's network. Dedicated Transport Dark Fiber consists of unactivated optical interoffice transmission facilities.
- 7.3 Lawful UNE Dedicated Transport Dark Fiber
- 7.3.1 At dedicated transport dark fiber segments in routes that have not been Declassified, SBC MISSOURI will provide a Lawful UNE Dedicated Transport Dark Fiber segment that is considered "spare" as defined in Sections 14.6 and 14.7 below. Lawful UNE Dedicated Transport Dark Fiber is defined as SBC MISSOURI dark fiber interoffice transmission facilities dedicated to a particular CLEC that are within SBC MISSOURI's network, connecting SBC MISSOURI switches or wire centers within a LATA. SBC MISSOURI is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of SBC MISSOURI wire centers. SBC MISSOURI will offer Lawful UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each SBC MISSOURI CO where the requested Lawful UNE Dedicated Transport Dark Fiber(s) terminate.
- 7.4 A "route" is defined as a transmission path between one of SBC MISSOURI's wire centers or switches and another of SBC MISSOURI's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.
- 7.5 Spare Fiber Inventory Availability and Condition
- 7.5.1 All available spare Lawful UNE Dedicated Transport Dark Fiber will be provided as is. No conditioning will be offered. Spare dedicated transport dark fiber is fiber that can be spliced in all segments, point to point but not assigned, and spare dedicated transport dark fiber does not include maintenance spares, fibers set aside and documented for SBC MISSOURI's forecasted growth, defective fibers, or fibers subscribed to by other Telecommunications Carriers. CLEC will not obtain any more than 25% of the spare Lawful UNE Dedicated Transport Dark Fiber contained in the requested segment during any two-year period.
- 7.6 Determining Spare Fibers
- 7.6.1 SBC MISSOURI will inventory dedicated transport dark fiber. Spare dedicated transport dark fiber does not include the following:
- 7.6.1.1 Maintenance spares. Maintenance spares shall be kept in inventory like a working fiber. Spare maintenance fibers are assigned as follows:
- 7.6.1.1.1 Cables with 24 fibers and less: two maintenance spare fibers;
- 7.6.1.1.2 Cables with 36 and 48 fibers: four maintenance spare fibers;
- 7.6.1.1.3 Cables with 72 and 96 fibers: eight maintenance spare fibers;
- 7.6.1.1.4 Cables with 144 fibers: twelve maintenance spare fibers;
- 7.6.1.1.5 Cables with 216 fibers: 18 maintenance spares;
- 7.6.1.1.6 Cables with 288 fibers: 24 maintenance spares;
- 7.6.1.1.7 Cables with 432 fibers: 36 maintenance spares; or

- 7.6.1.1.8 Cables with 864 fibers: 72 maintenance spares.
- 7.6.1.2 Defective fibers. Defective fibers, if any, will be deducted from the total number of spare dedicated transport dark fiber that would otherwise be available.
- 7.6.1.3 SBC MISSOURI growth fibers. Fibers documented as reserved by SBC MISSOURI for utilization for growth within the 12 month-period following the carrier's request.
- 7.6.2 The appropriate SBC MISSOURI engineering organization will maintain records on each fiber optic cable for which CLECs request Lawful UNE Dedicated Transport Dark Fiber.
- 7.7 Quantities and Time Frames for ordering Lawful UNE Dedicated Transport Dark Fiber
- 7.7.1 The minimum number of Lawful UNE Dedicated Transport Dark Fiber strands that CLEC can order is one, and such strands must be ordered on a strand-by-strand basis. The maximum number of such strands that CLEC can order is no greater than 25% of the spare dedicated transport dark fiber in the segment requested. Should spare dedicated transport dark fiber fall below 8 strands in a given location, SBC MISSOURI will provide no more than a quantity of 2 strands. (See definition of spare set forth in Section 7.6 above.)
- 7.7.2 If CLEC wishes to request Lawful UNE Dedicated Transport Dark Fiber, it must submit a dark fiber facility inquiry, providing CLEC's specific point to point (A to Z) dark fiber requirements. When CLEC submits a dark fiber facility inquiry appropriate rates for the inquiry will be charged as outlined in state specific Appendix Pricing.
- 7.7.2.1 If spare Lawful UNE Dedicated Transport Dark Fiber is available, as determined under this Agreement, SBC MISSOURI will notify CLEC and CLEC may place an Access Service Request (ASR) for such fiber.
- 7.7.3 Lawful UNE Dedicated Transport Dark Fiber will be assigned to CLEC only when an ASR is processed. ASRs will be processed on a first-come-first-served basis. Inquiry facility checks do not serve to reserve Lawful UNE Dedicated Transport Dark Fiber. When CLEC submits the ASR, the ASR will be processed and the Lawful UNE Dedicated Transport Dark Fiber facilities will be assigned. The charges which will be established as set forth in Appendix Pricing will be applied.
- 7.8 Right of Revocation of Access to Lawful UNE Dedicated Transport Dark Fiber
- 7.8.1 Right of revocation of access to Lawful UNE Dedicated Transport Dark Fiber is distinguishable from Declassification as defined in Section 2 of this Attachment. For clarification purposes, SBC MISSOURI's right of revocation of access under this Section 7.9 applies even when the affected dedicated transport dark fiber remains a Lawful UNE, subject to unbundling obligations under Section 251(c)(3) of the Act, in which case CLEC's rights to the affected network element may be revoked as provided in this Section 7.8.
- 7.8.2 Should CLEC not utilize the fiber strand(s) subscribed to within the 12-month period following the date SBC MISSOURI provided the fiber(s), SBC MISSOURI may revoke CLEC's access to the Lawful UNE Dedicated Transport Dark Fiber and recover those fiber facilities and return them to SBC MISSOURI inventory.
- 7.8.3 SBC MISSOURI may reclaim from the CLEC the right to use Lawful UNE Dedicated Transport Dark Fiber, whether or not such fiber is being utilized by CLEC, upon twelve (12) months written notice to the CLEC. If the reclaimed Lawful UNE Dedicated Transport Dark Fiber is not otherwise Declassified during the notice period, SBC MISSOURI will provide an alternative facility for the CLEC with the same bandwidth the CLEC was using prior to reclaiming the facility. SBC MISSOURI must also demonstrate to the CLEC that the reclaimed dedicated transport dark fiber will be needed to meet SBC MISSOURI's bandwidth requirements within the 12 months following the revocation.
- 7.9 Access Methods specific to Lawful UNE Dedicated Transport Dark Fiber
- 7.9.1 The demarcation point for Lawful UNE Dedicated Transport Dark Fiber at Central Offices and End User premises will be in an SBC MISSOURI approved splitter shelf. This arrangement allows for non-intrusive testing.

- 7.9.2 At CO's, Lawful UNE Dedicated Transport Dark Fiber terminates on a fiber distribution frame, or equivalent in the CO. CLEC access is provided via collocation.
- 7.10 Installation and Maintenance for Lawful UNE Dedicated Transport Dark Fiber
- 7.10.1 SBC MISSOURI will install demarcations and place the fiber jumpers from the fiber optic terminals to the demarcation point. CLEC will run its fiber jumpers from the demarcation point (1x2, 90-10 optical splitter) to the CLEC or End User equipment.
- 7.11 Dark Fiber Transport Declassification
- 7.11.1 SBC MISSOURI shall provide CLEC with access to Lawful UNE Dedicated Transport Dark Fiber, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such SBC MISSOURI must provide Lawful UNE Dedicated Transport Dark Fiber under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then Dedicated Transport Dark Fiber circuits on such routes are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering Lawful UNE Dedicated Transport Dark Fiber on such route(s).
- 7.11.2 Effect on Embedded Base. Upon Declassification of Dedicated Transport Dark Fiber already purchased by CLEC as Lawful UNEs under this Agreement, SBC MISSOURI will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 "Notice and Transition Procedure," and at the end of the 30-day notice period under that Section, provision of the affected dedicated transport dark fiber to CLEC will be terminated without further obligation of SBC MISSOURI.
- 7.11.3 Products provided by SBC MISSOURI in conjunction with Lawful UNE Dedicated Transport Dark Fiber, if any, shall also be subject to termination under this Section 7.11 where such fiber is Declassified.
- 7.11.4 The Parties agree that activity by SBC MISSOURI under this Section 7.11 shall not be subject to the Network Disclosure Rules.
- 7.12 Routine Network Modifications – Dark Fiber Dedicated Transport
- 7.12.1 SBC MISSOURI shall make routine network modifications to Lawful UNE Dedicated Transport Dark Fiber used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested Lawful UNE Dedicated Transport Dark Fiber facilities have already been constructed. SBC MISSOURI shall perform routine network modifications to Lawful UNE Dedicated Transport Dark Fiber in a nondiscriminatory fashion, without regard to whether such fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.
- 7.12.2 A routine network modification is an activity that SBC MISSOURI regularly undertakes for its own customers. Routine network modifications do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and SBC MISSOURI is not obligated to perform those activities for a requesting Telecommunications Carrier.
- 7.12.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport Dark Fiber; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. SBC MISSOURI is not obligated to perform those activities for a requesting telecommunications carrier.
- 7.12.4 SBC MISSOURI shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC MISSOURI's retail customers.
- 7.12.5 Notwithstanding anything to the contrary herein, SBC MISSOURI's obligations with respect to routine network modifications apply only where the dark fiber transport transmission facilities are subject to unbundling.

- 7.12.6 SBC MISSOURI shall provide routine network modifications at the rates, terms and conditions set out in this Attachment, and in the Appendix Pricing. SBC MISSOURI will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which SBC MISSOURI is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all SBC MISSOURI include: dark fiber transport splicingA rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.

## **8. ACCESS TO LAWFUL UNE CONNECTION METHODS**

- 8.1 Subject to Section 2 of this Appendix Lawful UNEs, SBC MISSOURI shall provide Access to Lawful UNE Connection Methods under the following terms and conditions.
- 8.2 This Section describes the connection methods under which SBC MISSOURI agrees to provide CLECs with access to Lawful UNEs under this Appendix Lawful UNEs and the conditions under which SBC MISSOURI makes these methods available. These methods provide CLEC access to multiple SBC MISSOURI Lawful UNEs that the CLEC may then combine. The methods listed below provide CLEC with access to Lawful UNEs without compromising the security, integrity, and reliability of the public switched network, as well as to minimize potential service disruptions.
- 8.2.1 Subject to availability of space and equipment, CLEC may use the methods listed below to access and combine Lawful UNE Local Loops within a requested SBC MISSOURI Central Office.
- 8.2.1.1 (Method 1)
- SBC MISSOURI will extend SBC MISSOURI Lawful UNEs requiring cross connection to the CLEC's Physical or Virtual Collocation Point of Termination (POT) when the CLEC is Physically Collocated, e.g. in a caged, cageless or shared cage arrangement or Virtually Collocated, within the same Central Office where the Lawful UNEs which are to be combined are located. For Collocation terms and conditions refer to the Physical and Virtual Collocation Appendices.
- 8.2.1.2 (Method 2)
- SBC MISSOURI will extend SBC MISSOURI Lawful UNEs that require cross connection to the CLEC's Lawful UNE frame located in the common room space, other than the Collocation common area, within the same Central Office where the Lawful UNEs which are to be combined are located.
- 8.2.1.3 (Method 3)
- SBC MISSOURI will extend SBC MISSOURI Lawful UNEs to the CLEC's Lawful UNE frame that is located outside the SBC MISSOURI Central Office where the Lawful UNEs are to be combined in a closure such as a cabinet provided by SBC MISSOURI on SBC MISSOURI property.
- 8.3 The following terms and conditions apply to Methods 2 and 3 when SBC MISSOURI provides access to Lawful UNEs pursuant to Sections 8.2.1.2 and 8.2.1.3:
- 8.3.1 The CLEC may cancel the request at any time, but will pay SBC MISSOURI's reasonable and demonstrable costs for modifying SBC MISSOURI's Central Office up to the date of cancellation.
- 8.3.2 CLEC shall be responsible for initial testing and trouble sectionalization of facilities containing CLEC installed cross connects.

- 8.3.3 CLEC shall refer trouble sectionalized in the SBC MISSOURI Lawful UNE to SBC MISSOURI.
- 8.3.4 Prior to SBC MISSOURI providing access to Lawful UNEs under this Appendix, CLEC and SBC MISSOURI shall provide each other with a point of contact for overall coordination.
- 8.3.5 CLEC shall provide all tools and materials required to place and remove the cross connects necessary to combine and disconnect Lawful UNEs when CLEC combines or disconnects Lawful UNEs.
- 8.3.6 CLEC shall designate each Lawful UNE being ordered from SBC MISSOURI. CLEC shall provide an interface to receive assignment information from SBC MISSOURI regarding location of the affected Lawful UNEs. This interface may be manual or mechanized.
- 8.3.7 SBC MISSOURI will provide CLEC with contact numbers as necessary to resolve assignment conflicts encountered. All contact with SBC MISSOURI shall be referred to such contact numbers.
- 8.3.8 Certain construction and preparation activities may be required to modify a building or prepare the premises for access to Lawful UNEs.
  - 8.3.8.1 Where applicable, costs for modifying a building or preparing the premises for access to SBC MISSOURI Lawful UNEs will be made on an individual case basis (ICB).
  - 8.3.8.2 SBC MISSOURI will contract for and perform the construction and preparation activities using same or consistent practices that are used by SBC MISSOURI for other construction and preparation work performed in the building.

## **9. RESERVED**

## **10. DS1 AND DS3 DEDICATED TRANSPORT**

- 10.1 Subject to Section 2 of this Appendix Lawful UNEs, SBC MISSOURI shall provide Lawful UNE DS1/DS3 Dedicated Transport under the following terms and conditions in this subsection.
- 10.2 For purposes of this Agreement, the following definitions apply:
  - 10.2.1 "Dedicated Transport" is defined as SBC MISSOURI interoffice transmission facilities between wire centers or switches owned by SBC MISSOURI, or between wire centers or switches owned by SBC MISSOURI and switches owned by requesting telecommunications carriers, dedicated to a particular customer or carrier.
    - 10.2.1.1 SBC MISSOURI is not obligated to provide CLEC with unbundled access to Dedicated Transport that does not connect a pair of SBC MISSOURI wire centers.
  - 10.2.2 A "route" is defined as a transmission path between one of SBC MISSOURI's wire centers or switches and another of SBC MISSOURI's wire centers or switches. A route between two points (e.g., wire center of switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g. wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.
- 10.3 SBC MISSOURI will be responsible for the engineering, provisioning, maintenance of the underlying equipment and facilities that are used to provide Lawful UNE DS1/DS3 Dedicated Transport.
  - 10.3.1 Subject to the caps set forth in Sections 10.3.4 and 10.3.5, Lawful UNE DS1/DS3 Dedicated Transport will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.
  - 10.3.2 SBC MISSOURI will provide Lawful UNE DS1 and DS3 Transport to a requesting CLEC only at the following speeds: DS1 (1.544 Mbps) and DS3 (44.736 Mbps).
  - 10.3.3 Lawful UNE DS1 and DS3 Transport includes, as follows:

10.3.3.1 Multiplexing – an option ordered in conjunction with Lawful UNE DS1 or DS3 Dedicated Transport which converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as Lawful UNE DS1 or DS3 Dedicated Transport.

10.3.3.2 Other Optional features are outlined in Appendix Pricing.

10.3.4 DS3 Transport “Caps”

10.3.4.1 SBC MISSOURI is not obligated to provide to CLEC more than twelve(12) DS3 Lawful UNE Dedicated Transport circuits on each route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Dedicated Transport once CLEC has already obtained twelve DS3 Lawful UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at SBC MISSOURI's option it may accept the order, but convert any requested DS3 Lawful UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Dedicated Transport circuits as of the date of provisioning.

10.3.5 DS1 Transport “Caps”

10.3.5.1 SBC MISSOURI is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE Dedicated Transport circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Dedicated Transport once CLEC has already obtained ten DS1 Lawful UNE Dedicated Transport circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at SBC MISSOURI's option it may accept the order, but convert any requested DS1 Lawful UNE Dedicated Transport in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Dedicated Transport circuits as of the date of provisioning

10.4 Diversity

10.4.1 When requested by CLEC, and subject to all applicable terms, conditions, and applicable charges, and only where such interoffice facilities exist at the time of CLEC request, Physical diversity shall be provided for Lawful UNE Dedicated Transport. Physical diversity means that two circuits are provisioned in such a way that no single failure of facilities or equipment will cause a failure on both circuits.

10.4.2 SBC MISSOURI shall provide the Physical separation between intra-office and inter-office transmission paths when technically and economically feasible. Physical diversity requested by the CLEC shall be subject to additional charges. When additional costs are incurred by SBC MISSOURI for CLEC specific diversity. SBC MISSOURI will advise CLEC of the applicable additional charges. SBC MISSOURI will not process the request for diversity until CLEC accepts such charges. Any applicable performance measures will be abated from the time diversity is requested until CLEC accepts the additional charges.

10.5 Declassification Procedure

10.5.1 Wire Center “Tiers” - For purposes of this Section 13.5 (and Section 14 related to Dark Fiber), wire centers are classified into three “tiers,” as follows:

- (i) Tier 1 Wire Centers are those ILEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 Wire Centers also are those ILEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLECs. Once a wire center is determined to be a Tier 1 Wire Center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.
- (ii) Tier 2 Wire Centers are those ILEC wire centers that are not Tier 1 Wire Centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.
- (iii) Tier 3 Wire Centers are those ILEC wire centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

## 10.5.2 DS1 Transport Declassification

10.5.2.1 Subject to the cap described in Section 13.3.6, SBC MISSOURI shall provide CLEC with access to Lawful UNE DS1 Dedicated Transport on routes, except routes where both wire centers defining the route are Tier 1 Wire Centers. As such SBC MISSOURI must provide Lawful UNE DS1 Dedicated Transport under this Agreement only if a wire center at either end of a requested route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center. DS1 Dedicated Transport circuits on routes between Tier 1 Wire Centers are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Dedicated Transport on such route(s).

## 10.5.2 DS3 Transport Declassification

10.5.3.1 Subject to the cap described in Section 10.3.4, SBC MISSOURI shall provide CLEC with access to Lawful UNE DS3 Dedicated Transport, except on routes where both wire centers defining the route are either Tier 1 or Tier 2 Wire Centers. As such SBC MISSOURI must provide Lawful UNE DS3 Dedicated Transport under this Agreement only if a wire center on either end of the requested route is a Tier 3 Wire Center. If both wire centers defining a requested route are either Tier 1 or Tier 2 Wire Centers, then DS3 Dedicated Transport circuits on such routes are Declassified and no longer available as Lawful UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Dedicated Transport on such route(s).

10.5.4 Effect on Embedded Base. Upon Declassification of DS1 Dedicated Transport or DS3 Dedicated Transport already purchased by CLEC as Lawful UNEs under this Agreement, SBC MISSOURI will provide written notice to CLEC of such Declassification, and proceed in accordance with Section 2.5 "Notice and Transition Procedure."

10.5.5 Products provided by SBC MISSOURI in conjunction with Lawful UNE DS1 or DS3 Dedicated Transport (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Transport is Declassified.

10.6 The Parties agree that activity by SBC MISSOURI under this Section 13.5 shall not be subject to the Network Disclosure Rules.

## 10.7 Routine Network Modifications – Lawful UNE Dedicated Transport

10.7.1 SBC MISSOURI shall make routine network modifications to Lawful UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested Lawful UNE Dedicated Transport facilities have already been constructed. SBC MISSOURI shall perform routine network modifications to Lawful UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

10.7.2 A routine network modification is an activity that SBC MISSOURI regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of cable and deploying a new multiplexer or reconfiguring an existing multiplexer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier, and SBC MISSOURI is not obligated to perform those activities for a requesting telecommunications carrier.

10.7.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. SBC MISSOURI is not obligated to perform those activities for a requesting telecommunications carrier.

- 10.7.4 SBC MISSOURI shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC MISSOURI's retail customers.
- 10.7.5 Notwithstanding anything to the contrary herein, SBC MISSOURI's obligations with respect to routine network modifications apply only where the dedicated transport transmission facilities are subject to unbundling.
- 10.7.6 SBC MISSOURI shall provide routine network modifications at the rates, terms and conditions set out in this Attachment and in the Appendix Pricing. SBC MISSOURI will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which SBC MISSOURI is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all SBC MISSOURI include, but are not limited to splicing. A rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.
- 10.9 911 or E911 Database
- 10.9.1 Access to the SBC MISSOURI 911 or E911 call related databases will be provided as described in the Lawful 911 and E911 Appendix.
- 10.10 Operations Support Systems Functions
- 10.10.1 Definition: Operations Support Systems Functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by SBC MISSOURI's databases and information. SBC MISSOURI will provide CLEC access to its Operations Support Systems Functions as outlined in Appendix OSS.



## **11. CROSS-CONNECTS**

- 11.1 The cross connect is the media between the SBC MISSOURI distribution frame and an CLEC designated collocated space, Lawful UNE Access Method, Lawful UNE Subloop Access Method, or other SBC MISSOURI lawful unbundled network elements leased by CLEC.
- 11.2 SBC MISSOURI offers a choice of loop cross connects with each unbundled loop type detailed in Appendix Pricing. SBC MISSOURI will charge CLEC the appropriate rate as shown on Appendix Pricing Lawful UNE - Schedule of Prices labeled "Loop Cross Connects with Testing" and "Loop Cross Connects without Testing."
- 11.3 Cross connects to the collocation associated with Lawful UNE local loops are available with or without automated testing and monitoring capability.
- 11.4 SBC MISSOURI offers the choice of three types of cross connects with subloop elements as detailed in Appendix pricing. SBC MISSOURI will charge CLEC the appropriate rate as shown on Appendix Pricing Lawful UNE - Schedule of Prices labeled "Lawful UNE Subloop Cross Connect."

## **12. ADDITIONAL REQUIREMENTS APPLICABLE TO LAWFUL UNBUNDLED NETWORK ELEMENTS**

This Section 12 sets forth additional requirements for Lawful unbundled Network Elements which SBC MISSOURI agrees to offer to CLEC under this Agreement.

- 12.1 SBC MISSOURI will offer Lawful UNE local loops with and without automated testing and monitoring services, where technically feasible. If an LSP uses its own testing and monitoring services, SBC MISSOURI still must treat the test reports as its own for purposes of procedures and time intervals for clearing trouble reports.
- 12.2 Synchronization
- 12.2.1 Definition:
- Synchronization is the function which keeps all digital equipment in a communications network operating at the same average frequency. With respect to digital transmission, information is coded into discrete pulses. When these pulses are transmitted through a digital communications network, all synchronous Network Elements are traceable to a stable and accurate timing source. Network synchronization is accomplished by timing all synchronous Network Elements in the network to a stratum 1 source so that transmission from these network points have the same average line rate.
- 12.2.2 Technical Requirements
- SBC MISSOURI will provide synchronization to equipment that is owned by SBC MISSOURI and is used to provide a network element to CLEC in the same manner that SBC MISSOURI provides synchronization to itself.

## **13. PRICING**

- 13.1 Price Schedules

Attached hereto as Appendix Pricing – Lawful UNE is a schedule which reflects the prices at which SBC MISSOURI agrees to furnish Lawful unbundled Network Elements to CLEC.