

**COLLOCATION POWER AMENDMENT
TO THE INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996
BETWEEN
WISCONSIN BELL, INC. D/B/A SBC WISCONSIN
AND
NEW EDGE NETWORK, INC. D/B/A NEW EDGE NETWORKS**

This Collocation Power Amendment to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the “**Amendment**”) by and between Wisconsin Bell, Inc. d/b/a SBC Wisconsin (“SBC Wisconsin”) and New Edge Network, Inc. d/b/a New Edge Networks (“**CLEC**”) is dated _____, 2004.

WHEREAS, SBC Wisconsin and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (“**Act**”) submitted for approval in the Wisconsin Public Service Commission, Cause No. _____, as may have been amended prior to the date hereof (the “**Agreement**”);

WHEREAS, the Parties want to amend the Agreement to establish an agreed methodology for charging for collocation DC Power, as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Agreement.

2. Beginning on and after the Amendment Effective Date (as defined in paragraph 8 of this Amendment), CLEC represents and warrants that it will at no time draw more than 50% of the combined ordered capacity of the DC power leads (in amperes or “AMPs”) that are fused for a collocation arrangement (the aggregate ordered capacity of all fused leads for that arrangement, e.g., all “A” AMPs and all “B” AMPs). Based upon that representation and warranty, SBC Wisconsin shall prospectively bill the CLEC for DC collocation power at a monthly recurring rate of \$10.61 per AMP applied to fifty percent (50%) of the ordered capacity that is fused. By way of example, where a CLEC has ordered and SBC Wisconsin has provisioned two (2) twenty (20) AMP DC power leads that have been fused (for a combined total of forty (40) AMPs), based upon that representation and warranty, SBC Wisconsin shall bill the CLEC the monthly recurring charge of \$10.61 for a total of twenty (20) AMPs (i.e., \$212.20 per month).

3. If CLEC is also purchasing any collocation arrangement pursuant to the applicable state tariff, this Amendment shall apply to any such arrangement only as to its monthly recurring DC power charges in accordance with the Amendment’s provisions; that Tariff would otherwise continue to apply to that arrangement(s).

4. SBC Wisconsin has the right to periodically inspect and/or test the amount of DC power CLEC actually draws and, in the event CLEC is found to have breached the representation and warranty set forth in paragraph 2, to pursue remedies for breach of this Amendment and the Agreement.

5. CLEC agrees to refrain from initiating or participating in any opposition activity to SBC's current power reduction charges, policies and practices. Further, CLEC agrees not to propose or support any proposal to reduce or change charges for collocation DC power charges (or changes in policies or application that result in a reduction or change), including any proposal to base DC collocation power charges on a metered "as used, per amp" basis. In addition, CLEC and SBC Wisconsin agree to mutually release and discharge each other from all claims which each Party may have against the other arising directly or indirectly out of, or relating in any way, to charges for DC collocation power. The billing arrangement described in Paragraphs 2 and 3 ("Billing Arrangement"), above, is integrally related to the overall settlement and the mutual release and discharge. Said mutual release and discharge, and the Billing Arrangement are expressly contingent upon:

- 1) approval by the State Commission of the terms and conditions of this Amendment; and
- 2) dismissal with prejudice of CLEC's complaint or complaints with the State Commission arising directly or indirectly out of, or relating in any way to charges for DC collocation power ("Collocation Power Complaint(s)"), to the extent CLEC has filed such Collocation Power Complaint(s); and
- 3) an exchange of consideration between the Parties in connection with said settlement, including a payment from CLEC to SBC of a mutually agreed upon amount.

6. The provisions of this Amendment shall remain effective until such time as the State Commission establishes, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Wisconsin's collocation DC power, or until expiration or termination of this Amendment, whichever is first. If the foregoing is triggered by a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, then either Party may invoke the change of law/rate (or similar) provisions of the Agreement, as may be applicable, in accordance with such provisions. In the case of either triggering event, the provisions of this Amendment shall continue to apply until thereafter replaced by a successor interconnection agreement/amendment, as the case may be. By executing this Amendment, both Parties relinquish any right, during the term of the Amendment, to a different rate and billing procedure (including rate application) from the Power Change Date until such time as the State Commission, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Wisconsin's collocation DC power.

7. Nothing in this Amendment shall be deemed or considered an admission on the part of SBC Wisconsin as to, or evidence of, the unreasonableness of the rates and elements for collocation DC power in SBC Wisconsin, or of the manner in which SBC Wisconsin has applied or billed such rates, or any other aspect of its collocation power billing, all as existed prior to the changes being made by this Amendment. Nothing in this Amendment shall restrict either Party's rights with respect to arguments or positions either may take in any pending or future proceedings. Nothing in this Amendment shall affect either Party's rights, claims, arguments, or positions with respect to collocation power billing (including rate application) for the period prior to the Power Change Date.

8. The effective date of this Amendment shall be the day the State Commission approves this Amendment under Section 252(e) of the Act or, absent such State Commission approval, the date this Amendment is deemed approved by operation of law ("**Amendment Effective Date**"). In the event that all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the State

Commission, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the State Commission; provided, however, that failure to reach such mutually acceptable new provisions within thirty (30) days after such suspension shall permit either Party to terminate this Amendment upon ten (10) days written notice to the other.

9. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. This Amendment will become effective as of the Amendment Effective Date, and will terminate on the termination or expiration of the Agreement. This Amendment does not extend the term of the Agreement.

10. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, adopted on February 20, 2003; 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/or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law").

11. This Amendment constitutes the entire amendment of the Agreement and supersedes all previous proposals, both verbal and written. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. The Parties further acknowledge that the entirety of this Amendment and its provisions are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code, notwithstanding the fact that Section 252(i) does not apply to this Amendment.

12. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

IN WITNESS WHEREOF, each Party has caused this Amendment to be executed by its duly authorized representative.

New Edge Network, Inc. d/b/a New Edge Networks

**Wisconsin Bell, Inc. d/b/a SBC Wisconsin
By SBC Telecommunications, Inc., its
Authorized Agent**

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title *For/* President – Industry Markets

Date: _____

Date: _____

AECN/OCN # _____