



SBC Wisconsin
722 N. Broadway
Floor 13
Milwaukee, WI 53202

January 18, 2006

Ms. Christy Zehner
Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, Wisconsin 53707-7854

Re: Application for the Approval of a Negotiated Proposed TRO Declassification and TRO Remand Order Transitional Amendment to the Interconnection Agreement between Wisconsin Bell, Inc., d/b/a AT&T Wisconsin¹, and Sprint Communications Company, L.P.

Dear Ms. Zehner:

Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, and Sprint Communications Company, L.P. hereby request approval, pursuant to 47 U.S.C. 252, of this Negotiated Proposed TRO Declassification and TRO Remand Order Transitional Amendment to the Interconnection Agreement negotiated between Sprint Communications Company, L.P. and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin.

I have been authorized by Sprint Communications Company, L.P. to submit for Commission approval, pursuant to 47 U.S.C. s 252(e), the enclosed agreement.

Sprint Communications Company, L.P.
Ralph R. Smith
6330 Sprint Parkway
MS: KSOPHA0310-3B322
Overland Park, KS 66251
Tel: 913-762-4116
Fax: N/A

Very Truly Yours,

Joan Schoenberger

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

TRIENNIAL REVIEW ORDER DECLASSIFICATION AND TRO REMAND ORDER TRANSITIONAL AMENDMENT

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, Southwestern Bell Telephone, L.P. d/b/a SBC Wisconsin¹ ("**SBC WISCONSIN**") is no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in United States Telecom Ass'n v. F.C.C., 359 F3d 554 (D.C. Cir. 2004) ("USTA II") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the USTA II decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,² on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS"), and holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended to ensure that the terms and conditions of the Agreement related to specific network elements made available hereunder on an unbundled basis under Sections 251(c)(3) and (d)(2) are conformed so as to be consistent with applicable federal law:

1. **Lawful UNEs and Declassification.** **SBC WISCONSIN** will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules, e.g. 47 C.F.R. Part 51, and associated lawful and effective FCC and judicial orders, in **SBC WISCONSIN**'s incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, **SBC WISCONSIN** 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 under this agreement 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 WISCONSIN** 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." 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".

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc., (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. Southwestern Bell Telephone, L.P. is now doing business in Wisconsin as SBC Wisconsin.

² Order on Remand, *Unbundled Access to Network Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

1.1 **TRO-Declassified Elements.** Pursuant to the *TRO*, nothing in the Agreement requires SBC WISCONSIN to provide to CLEC any of the following items as unbundled network elements Section 251, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

- (i) entrance facilities;
- (ii) DSO or OCn level dedicated transport;
- (iii) enterprise market (DS1 and above) local switching (defined as (a) all line-side and trunk-side facilities as defined in the *TRO*, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);
- (iv) OCn loops;
- (v) the feeder portion of the loop;
- (vi) line sharing except for customers grandfathered pursuant to 47 C.F.R. §51.319(a)(1)(i)(A);
- (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
- (viii) SS7 signaling to the extent not provided in conjunction with unbundled local switching;
- (ix) packet switching, including routers and DSLAMs;
- (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and
- (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that SBC WISCONSIN has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC WISCONSIN will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

1.2 **TRO Remand-Declassified Elements (Mass Market Unbundled Local Switching and UNE-P)**

- 1.2.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P"). Accordingly, pursuant to Rule 51.319(d)(2)(iii), although SBC WISCONSIN shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of end-user customers (i.e., only Mass Market ULS or Mass Market UNE-P ordered by CLEC before March 11, 2005), the price for such Mass Market ULS and UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS and UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS and UNE-P, plus one dollar. For purposes of this Paragraph, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) CLEC shall be fully liable to SBC WISCONSIN to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
- 1.2.2 CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).
- 1.2.3 Paragraphs 1.2.1 and 1.2.2, above, apply and are operative regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

1.3 TRO Remand Declassified Elements (High-capacity Loop and Transport)

- 1.3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable. Wire centers are identified on the list by their eight character CLLI code. SBC WISCONSIN has posted this information on CLEC Online. See <https://clec.sbc.com/clec>. Select CLEC Handbook. Select Handbook/Region of choice. Select Ordering.

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii) and 51.319(e)(3), as applicable. Wire centers are identified on the list by their eight character CLLI code. SBC WISCONSIN has posted this information on CLEC Online. See <https://clec.sbc.com/clec>. Select CLEC Handbook. Select Handbook/Region of choice. Select Ordering.

Dark Fiber Transport, in excess of the –caps and between any pair of Tier 1 or Tier 2 wire centers as described in Rule 51.319(e)(2)(iv) and 51.319(e)(3). Wire centers are identified on the list by their eight character CLLI code. SBC WISCONSIN has posted this information on CLEC Online. See <https://clec.sbc.com/clec>. Select CLEC Handbook. Select Handbook/Region of choice. Select Ordering.

The above-listed element(s) are referred to herein as the "Affected Element(s)."

- 1.3.2 Accordingly, pursuant to Rules 51.319(a) and (e), although SBC WISCONSIN shall continue to provide CLEC's embedded base of the Affected Loop-Transport Element(s) (i.e., only Affected Loop-Transport Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), *plus 15%*. CLEC shall be fully liable to SBC WISCONSIN to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
- 1.3.3 CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 months for DS1/DS3 or 18 months for Dark Fiber from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC WISCONSIN by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.
- 1.3.4 Paragraphs 1.3.1 and 1.3.2, above, apply and are operative regardless of whether CLEC is requesting the Affected Loop-Transport Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

1.4 Non-Impaired Wire Center Criteria and Related Processes.

- 1.4.1 SBC WISCONSIN has designated and posted to CLEC Online the wire centers where it contends the thresholds for DS1 and DS3 Unbundled High-Capacity Loops as defined in Section pursuant to Rules 51.319(a)(4) and Rule 51.319(a)(5) and for Tier 1 and Tier 2 Non-Impaired Wire Centers as defined in Sections pursuant to Rules 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) have been met. SBC WISCONSIN's designations shall be treated as controlling (even if CLEC believes the list is inaccurate) for purposes of transition and ordering unless CLEC provides a self-certification as

outlined below. Until CLEC provides a self-certification for High-Capacity Loops and/or Transport for such wire center designations, CLEC will not submit High Capacity Loop and/or Transport orders based on the wire center designation, and if no self-certification is provided will transition its Embedded Base of DS1 and DS3 Loop and Transport arrangements affected by the designation by disconnecting or transitioning to an alternate facility or arrangement, if available, by March 11, 2006. CLEC will transition any affected Dark Fiber Transport arrangements affected by the wire center designations by disconnecting or transitioning to an alternate facility or arrangement, if available, by September 11, 2006. SBC WISCONSIN will update the CLEC Online posted list and will advise CLECs of such posting via Accessible Letter, which term for the purposes of this Section 1.4 of this Amendment shall be deemed to mean an Accessible Letter issued after the effective date of this Amendment, as set forth in this Section 1.4 of this Amendment.

- 1.4.2 If the Commission has not previously determined, in any proceeding, that a wire center is properly designated as a wire center meeting the thresholds set forth in Sections pursuant to Rules 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then, prior to submitting an order for an unbundled a DS1/DS3 High-Capacity Loop, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangement, CLEC shall perform a reasonably diligent inquiry to determine that, to the best of CLEC's knowledge, whether the wire center meets the non-impairment thresholds as set forth in Sections pursuant to Rules 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) of this Amendment. If, based on its reasonably diligent inquiry, the CLEC disputes the SBC WISCONSIN wire center non-impairment designation, the CLEC will provide a self-certification to SBC WISCONSIN identifying the wire center(s) that it is self-certifying for. In performing its inquiry, CLEC shall not be required to consider any lists of non-impaired Wire Centers compiled by SBC WISCONSIN as creating a presumption that a Wire Center is not impaired. CLEC can send a letter to SBC WISCONSIN claiming Self Certification or CLEC may elect to self-certify using a written or electronic notification sent to SBC WISCONSIN. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, SBC WISCONSIN shall provision the requested facilities in accordance with CLEC's order and within SBC WISCONSIN's standard ordering interval applicable to such facilities. If SBC WISCONSIN in error rejects CLEC orders, where CLEC has provided self certification in accordance with this Section 1.4 of this Amendment, SBC WISCONSIN will modify its systems to accept such orders within 5 business hours of CLEC notification to its account manager. CLEC may not submit a self-certification for a wire center after the transition period for the DS1/DS3 Loops and/or DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport impacted by the designation of the wire center has passed.

- 1.4.2.1 The parties recognize that wire centers that SBC WISCONSIN had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, 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 WISCONSIN may add the wire center to the list of designated wire centers and the Parties will use the following process:

1.4.2.1.1 SBC WISCONSIN may update the wire center list as changes occur.

1.4.2.1.2 To designate a wire center that had previously not met one or more of the FCC's impairment thresholds but subsequently does so, SBC WISCONSIN will provide notification to CLEC via Accessible Letter and by a posting on CLEC Online.

1.4.2.1.3 SBC WISCONSIN will continue to accept CLEC orders for impacted DS1/DS3 High Capacity 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.

- 1.4.2.1.4 In the event the CLEC disagrees with SBC WISCONSIN's determination and CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute SBC WISCONSIN'S determination regarding the wire center by providing a self-certification to SBC WISCONSIN.
- 1.4.2.1.5 If the CLEC does not use the self-certification process described in this Section 1.4 of this Amendment to self-certify against SBC WISCONSIN's wire center designation within 60 calendar days of the issuance of the Accessible Letter, the parties must comply with the Applicable Transitional Period as follows: transition all circuits that have been declassified by the wire center designation(s) ending on the 90th day after the issuance of the Accessible Letter providing the wire center designation of non-impairment or the end of the applicable transition period described in Section 1.3.3 of this Amendment, whichever is later for the Applicable Transitional Period, no additional notification will be required. CLEC may not obtain new DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in wire centers and/or routes where such circuits have been declassified during the applicable transition period.
- 1.4.2.1.6 If the CLEC does provide self-certification to dispute SBC WISCONSIN's designation determination within 60 calendar days of the issuance of the Accessible Letter, SBC WISCONSIN may dispute CLEC's self-certification as described in Sections 1.4.2.3 and 1.4.2.4 of this Amendment and SBC WISCONSIN will accept and provision the applicable loop and transport orders for the CLEC providing the self certification during a dispute resolution process.
- 1.4.2.1.7 During the applicable transition period, the rates paid will be the rates in effect at the time of the non-impairment designations plus 15%.
- 1.4.2.2 If the Commission has previously determined, in any proceeding that a wire center is properly designated as a wire center meeting the thresholds set forth in Sections pursuant to Rules 51.319(a)(4), Rule 51.319(a)(5), Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii), then CLEC shall not request DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements declassified by the non-impairment status of the wire center in such wire center. If a CLEC withdraws its self-certification after a dispute has been filed with the Commission, but before the Commission has made a determination regarding the wire center designation, the wire center designation(s) that were the subject of the dispute will be treated as though the Commission approved SBC WISCONSIN's designations. If CLEC does not dispute SBC WISCONSIN's wire center determinations but it is subsequently determined by the Commission that CLECs are entitled to the provision of DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 251 for the wire centers/routes in question, Sprint can begin ordering the affected services upon the effective date of such determination.
- 1.4.2.3 If it desires to do so, SBC WISCONSIN can dispute the self-certification and associated CLEC orders for facilities pursuant to the following procedures: SBC WISCONSIN will notify the CLEC of its intent to dispute the CLECs' self-certification within 30 days of the CLEC's self-certification or within 30 days of the effective date of this amendment, whichever is later. SBC WISCONSIN will file the dispute for resolution with the state Commission within 60 days of the CLEC's self-certification or within 60 days of the effective date of this amendment, whichever is later. SBC WISCONSIN will notify CLECs of the filing of such a dispute via Accessible Letter. If the self-certification dispute is filed with the state Commission for resolution, the Parties will not oppose requests for intervention by other CLECs if such request is related to the disputed wire center designation(s). The Parties agree to urge the Commission to adopt a case schedule resulting in the prompt resolution of the dispute. SBC WISCONSIN's failure to file a timely challenge, i.e., within 60 days of the

CLEC's self-certification or within 60 days of the effective date of this amendment, whichever is later, to any CLEC's self certification for a given wire center shall be deemed a waiver by SBC WISCONSIN of its rights to challenge any subsequent self certification for the affected wire center except as provided below. SBC WISCONSIN shall promptly notify CLEC of any time where SBC WISCONSIN has waived its ability to challenge a self-certification as to any wire center for carrier. SBC WISCONSIN may challenge future CLEC self-certifications pertaining to the wire center if the underlying facts pertaining to the designation of non-impairment have changed, in which case the Parties will follow the provisions for updating the wire center list outlined in Section 1.4.2.1 of this Amendment. During the timeframe of any dispute resolution proceeding, SBC WISCONSIN shall continue to provide the High-Capacity Loop or Transport facility in question to CLEC at the rates in the Pricing Appendix to the Agreement. If the CLEC withdraws its self-certification, or if the state Commission determines through arbitration or otherwise that CLEC was not entitled to the provisioned DS1/DS3 Loops or DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport under Section 251, the rates paid by CLEC for the affected loop or transport shall be subject to true-up as follows:

1.4.2.3.1 For wire centers designated by SBC WISCONSIN prior to March 11, 2005 and

1.4.2.3.1.1 For the affected loop/transport element(s) installed prior to March 11, 2005.

1.4.2.3.1.1.1 CLEC will provide true-up calculated using a beginning date of March 11, 2005 based on the FCC transitional rate described in Section 1.3.2 of this Amendment between March 11, 2005 and the end of the initial TRRO transition period described in Section 1.3.3. If affected loops/transport element(s) remain in place after the end of the initial TRRO transition period, CLEC will also provide true-up for the period after the end of initial TRRO transition period calculated using the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, true-up will be determined using the transitional rate described in Section 1.3.2 of this Amendment. The applicable equivalent special access rate/transitional rate as described above will continue to apply until the facility has been transitioned.

1.4.2.3.1.2 For the affected loop/transport element(s) installed after March 11, 2005, CLEC will provide true-up to an equivalent special access rate as of the latter of the date billing began for the provisioned element or thirty days after SBC WISCONSIN's notice of non-impairment. If no equivalent special access rate exists, true-up will be determined using the transitional rate described in Section 1.3.2 of this Amendment. The applicable equivalent special access rate/transitional rate will continue to apply until the facility has been transitioned.

1.4.2.3.2 For wire centers designated by SBC WISCONSIN after March 11, 2005.

1.4.2.3.2.1 For affected loop/transport elements ordered before SBC WISCONSIN's wire center designation.

1.4.2.3.3.1.1 If the applicable transition period is within the initial *TRRO* transition period described in Section 1.3.3 of this

Amendment, CLEC will provide true-up during the period between the date that is thirty (30) days after SBC WISCONSIN's notice of non-impairment and the date the circuit is transitioned to the transitional rate described in Section 1.4.2.1.7 of this Amendment.

1.4.2.3.2.1.2 If the applicable transition period is after the initial TRRO transition period described in Section 1.3.3 of this Amendment has expired, CLEC will provide true-up based on the transitional rate described in Section of this 1.4.2.1.7 Amendment between the date that is thirty (30) days after SBC WISCONSIN's notice of non-impairment and the end of the applicable transition period described in Section and the equivalent special access rates during 1.4.2. the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, true-up will be determined using the transitional rate described in Section 1.4.2.1.7 of this Amendment. The applicable equivalent special access/transitional rate as described above will continue to apply until the facility has been transitioned.

1.4.2.3.2.2 For affected loop/transport elements ordered after SBC WISCONSIN's wire center designation, CLEC will provide true-up for the affected loop/transport element(s) to an equivalent special access rate for the affected loop/transport element(s) as of the latter of the date billing began for the provisioned element or thirty (30) days after SBC WISCONSIN's notice of non-impairment. If no equivalent special access rate exists, true-up will be determined using the transitional rate described in Section 1.4.2.1.7 of this Amendment. The applicable equivalent special access/transitional rate will continue to apply until the facility has been transitioned.

1.4.2.4 In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, SBC WISCONSIN will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which SBC WISCONSIN intends to rely, which will include the detailed business line information for the SBC WISCONSIN wire center or centers that are the subject of the dispute.

1.4.3 The provisions of Section 1.3.3 of this Amendment shall apply to the transition of DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements impacted by wire center designation(s). As outlined in Section 1.3.3 of this Amendment, requested transitions of DS1/DS3 High Capacity loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall be performed in a manner that reasonably minimizes the disruption or degradation to CLEC's customer's service, and all applicable charges shall apply. Cross-connects provided by SBC WISCONSIN in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (i.e. if conversion is to an access product, they will be charged at applicable access rates). Cross-connects that are not associated with such transitioned DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall not be re-priced.

1.4.4 SBC WISCONSIN will process CLEC orders for DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport conversion or disconnection. SBC WISCONSIN will not convert or disconnect these services prior to the end of the applicable transitional period unless specifically

requested by the CLEC; however, CLEC is responsible for ensuring that it submits timely orders in order to complete the transition by the end of applicable transitional period in an orderly manner.

- 1.4.5 A building that is served by both an impaired wire center and a non impaired wire center and that is not located in the serving area for the non-impaired wire center will continue to have Affected Elements available from the impaired wire center and support incremental moves, adds, and changes otherwise permitted by the Agreement, as amended
- 1.4.6 Notwithstanding anything to the contrary in the Agreement, including any amendments to this Agreement, at the end of the Applicable Transitional Period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 1.3.3 of this Amendment above, and if CLEC and SBC WISCONSIN have failed to reach agreement under Section 1.3.3 of this Amendment above as to a substitute service arrangement or element, then SBC WISCONSIN may, at its sole option, disconnect dark fiber 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 at rates applicable to such analogous service or arrangement.

2. New Combinations Involving Lawful UNEs

- 2.1 Subject to the provisions hereof and upon CLEC request, SBC WISCONSIN 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.
 - 2.1.1 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 WISCONSIN might offer pursuant to Section 271 of the Act.
- 2.2 In the event that SBC WISCONSIN 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 WISCONSIN 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 WISCONSIN 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. of this Amendment.
- 2.3 In accordance with and subject to the provisions of this Section 2., including Section 2.3.2 and 2.5, the new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Amendment shall be made available to CLEC as specified in the specific Schedule for a particular State.
 - 2.3.1 SBC WISCONSIN is willing to perform the actions necessary to complete the actual physical combination for those new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations to this Amendment, subject to the following:
 - 2.3.1.1 Section 2., including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC WISCONSIN 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 WISCONSIN. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC WISCONSIN from taking any

position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.

- 2.3.1.2 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, the Parties agree to negotiate an amendment to this Agreement to effectuate such change in law pursuant to Section 21 of the General Terms and Conditions of this Agreement.
- 2.3.2 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.
- 2.3.3 For a new Lawful UNE combination, if any, CLEC shall issue appropriate service requests. These requests will be processed by SBC WISCONSIN, 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.
- 2.3.4 Upon notice by SBC WISCONSIN, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by SBC WISCONSIN 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 4. For any such work done by SBC WISCONSIN under Section 2.1, 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 WISCONSIN, 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.
- 2.4 In accordance with and subject to the provisions of this Section 2., any request not included in Section 2.3 in which CLEC wants SBC WISCONSIN 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 WISCONSIN to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.
- 2.4.1 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 WISCONSIN Lawful UNE and the Lawful network element(s) possessed by CLEC.
- 2.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by SBC WISCONSIN under Section 2.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC WISCONSIN'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 WISCONSIN to perform work not required by Section 2.1, CLEC shall be charged a market-based rate for any such work.
- 2.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2. apply only in situations where each of the following is met:
- 2.5.1 it is technically feasible, including that network reliability and security would not be impaired;

- 2.5.2 SBC WISCONSIN's ability to retain responsibility for the management, control, and performance of its network would not be impaired;
- 2.5.3 INTENTIONALLY LEFT BLANK.
- 2.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC WISCONSIN's network; and
- 2.6 INTENTIONALLY LEFT BLANK.
- 2.7 INTENTIONALLY LEFT BLANK.
- 2.8 **Conversion of Wholesale Services to Lawful UNEs.**
- 2.8.1 Upon request, SBC WISCONSIN 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 Amendment, so long as the CLEC and the wholesale service, or group of wholesale services, and the Lawful UNEs, or combination of Lawful UNEs, that would result from the conversion meet the eligibility criteria that may be applicable. (By way of example only, the statutory conditions would constitute one such eligibility criterion.)
- 2.8.2 Where processes for the conversion requested pursuant to this Amendment are not already in place, SBC WISCONSIN will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 2.8.3 Except as agreed to by the Parties or otherwise provided hereunder, SBC WISCONSIN 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. SBC WISCONSIN's may charge applicable service order charges and record change charges.
- 2.8.4 This Section 2.8 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 Amendment.
- 2.8.5 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, CLEC agrees to convert the Lawful UNE or Lawful UNE combination, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.
- 2.8.5.1 This Section 2.8.5 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 WISCONSIN service.
- 2.8.5.2 SBC WISCONSIN may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.
- 2.8.6 In requesting a conversion of an SBC WISCONSIN service, CLEC must follow the guidelines and ordering requirements provided by SBC WISCONSIN that are applicable to converting the particular SBC WISCONSIN service sought to be converted.
- 2.8.7 Nothing contained in this Amendment or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC WISCONSIN's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.

2.9 Mandatory Eligibility Criteria for Access to Certain Lawful UNEs.

2.9.1 Except as provided below in this Section 2.9 or elsewhere in the Agreement and subject to this Section and Section 2.8, Conversion of Wholesale Services to UNEs, of this Amendment, **SBC WISCONSIN** 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.

2.9.1.1 "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 [2.9.3] of this Amendment (*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).

2.9.2 **SBC WISCONSIN** 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 transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 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 channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:

2.9.2.1 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.

2.9.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:

2.9.2.2.1 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 WISCONSIN** 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

2.9.2.2.2 Each DS1-equivalent circuit on a DS3 EEL 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

2.9.2.2.3 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

2.9.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.18.3 of this Lawful UNE Amendment; and

2.9.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.18.4 of this Lawful UNE Amendment; and

- 2.9.2.2.6 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 2.18.4 of this Amendment; and
- 2.9.2.2.7 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 included arrangements 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 WISCONSIN 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 2.18.3 of this Lawful UNE Amendment.

- 2.9.3 A collocation arrangement meets the requirements of Section 2.9 of this Lawful UNE Amendment if it is:
 - 2.9.3.1 Established pursuant to Section 251(c)(6) of the Act and located at SBC WISCONSIN's premises within the same LATA as the End User's premises, when SBC WISCONSIN is not the collocator; or
 - 2.9.3.2 Located at a third party's premises within the same LATA as the End User's premises, when SBC WISCONSIN is the collocator.
- 2.9.4 An interconnection trunk meets the requirements of Sections 2.9.2.2.5 and 2.9.2.2.6 of this Lawful UNE Amendment 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.
- 2.9.5 For a new circuit to which Section 2.9.2 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 2.9.2.2.1 and Section 2.9.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.9.2.2.1 and/or Section 2.9.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC WISCONSIN provisions such new circuit. CLEC must provide SBC WISCONSIN with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.
 - 2.9.5.1 Section 2.9.5 does not apply to existing circuits to which Section 2.9.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.9.2.2.1 and Section 2.9.2.2.3 requirements for existing circuits at the time it initiates the ordering process).
- 2.9.6 CLEC must provide the certification required by Section 2.9 on a form provided by SBC WISCONSIN, on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis.
 - 2.9.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with SBC WISCONSIN.
- 2.9.7 In addition to any other audit rights provided for this Agreement and those allowed by law, SBC WISCONSIN 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 2.9. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning

upon SBC WISCONSIN's written notice that an audit will be performed for that State, subject to Section 2.9.7.4 of this Section.

2.9.7.1 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.

2.9.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 2.18.

2.9.7.3 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.

2.9.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 2.9, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was determined to be non-compliant 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 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 WISCONSIN. 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 2.9 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 WISCONSIN shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.

2.9.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.9, CLEC must reimburse SBC WISCONSIN for the cost of the independent auditor and for SBC WISCONSIN's costs in the same manner and using the same methodology and rates that SBC WISCONSIN is required to pay CLEC's costs under Section 2.18.7.4.2.

2.9.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.9, SBC WISCONSIN 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.).

2.9.7.5 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.

2.9.8 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 2.9 in all cases and, further, the failure of SBC WISCONSIN to require such compliance, including if SBC WISCONSIN provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.9, 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.

- 2.10 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 WISCONSIN 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 SBC WISCONSIN will combine Lawful UNEs, combine Lawful UNE(s) with network elements possessed by CLEC, and/or Commingle only as set forth in this Lawful UNEs Amendment.
- 2.12 The Parties acknowledge that this Amendment Lawful UNEs does not contain the terms and conditions under which CLEC will obtain access to network elements from SBC WISCONSIN pursuant to § 271 of the Act but is limited to access to UNEs pursuant to § 251(d)(2) of the Act. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC WISCONSIN to enforce the foregoing (including if SBC WISCONSIN 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 WISCONSIN may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, SBC WISCONSIN may process any such order as being submitted under this Lawful UNE Amendment and, further, may convert any element provided under tariff, to this Lawful UNE Amendment, effective as of the later in time of the (i) effective date of this Amendment, or (ii) the submission of the order by CLEC.

3. **Commingling**

- 3.1 "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 WISCONSIN, 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.
- 3.1.1 "Commingled Arrangement" means the arrangement created by Commingling.
- 3.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC WISCONSIN offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).
- 3.1.3 Commingling is not permitted, nor is SBC WISCONSIN 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 WISCONSIN's ability to retain responsibility for the management, control, and performance of its network; or (iii) would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC WISCONSIN's network.
- 3.1.4 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 WISCONSIN will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 3.1.5 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC WISCONSIN 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 WISCONSIN might offer pursuant to Section 271 of the Act.
- 3.2 Except as provided in this Section and, further, subject to the other provisions of this Agreement, SBC WISCONSIN shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC WISCONSIN to the extent required by Lawful and effective FCC rules and associated Lawful and effective FCC and judicial orders.

- 3.3 Upon request, and subject to this Section 2, SBC WISCONSIN 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 WISCONSIN (as well as requests where CLEC also wants SBC WISCONSIN to complete the actual Commingling), except that SBC WISCONSIN shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) it is not technically feasible, including that network reliability and security would be impaired; or (ii) SBC WISCONSIN's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iii) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC WISCONSIN's network.
- 3.4 In accordance with and subject to the provisions of this Section 3, any request by CLEC for SBC WISCONSIN to perform the functions necessary to Commingle (as well as requests where CLEC also wants SBC WISCONSIN to complete the actual Commingling), shall be made by CLEC in accordance with this Agreement.
- 3.4.1 SBC WISCONSIN has developed a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC On-line." 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 in order to add new Commingled Arrangements developed via the BFR process and as required for future declassification of UNEs pursuant to change of law.
- 3.4.2 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 WISCONSIN 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.
- 3.4.3 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC WISCONSIN under this Section 4 (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 WISCONSIN'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 WISCONSIN to perform work not required by this Section 4.4, CLEC shall be charged a market-based rate for any such work.
- 3.5 SBC WISCONSIN 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 WISCONSIN 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.
- 3.6 Nothing in this Agreement shall impose any obligation on SBC WISCONSIN 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 WISCONSIN 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 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.

- 3.7 In the event that Commingling also involves SBC WISCONSIN performing the functions necessary to combine Lawful UNEs (e.g., make a new combination of Lawful UNEs), including making the actual Lawful UNE combination, then Section 4 shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement.
- 3.8 Subject to this Section 3, SBC WISCONSIN 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 WISCONSIN.
- 3.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, SBC WISCONSIN's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass SBC WISCONSIN offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNEs under 47 U.S.C. § 251(c)(3).

4. Routine Network Modifications

Furthermore, for purposes of this Amendment, SBC WISCONSIN shall make routine network modifications to UNE Local Loop and UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested UNE Local Loop or UNE Dedicated Transport facility has already been constructed. SBC WISCONSIN shall perform routine network modifications to UNE Local Loop and UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the UNE Local Loop or UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

- 4.1 A routine network modification is an activity that SBC WISCONSIN regularly undertakes for its own retail 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 a DS1 loop to activate such loops for its own retail customers, under the same conditions and in the same manner that SBC WISCONSIN does for its own retail customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings.
- 4.2 Routine network modifications do not include constructing new loops or transport facility; installing new cable; splicing cable at any location other than an existing splice point or at any location where a splice enclosure is not already present; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, handholes, poles, ducts or conduits; installing altogether new terminals or terminal enclosures (e.g., controlled environmental vaults, huts, or cabinets or providing new space or power for requesting carriers; removing or reconfiguring packetized transmission facility; or the provision of electronics for the purpose of lighting Dark Fiber Dedicated Transport(i.e., optronics). SBC WISCONSIN is not obligated to perform those activities for a requesting telecommunications carrier.
- 4.4 SBC WISCONSIN 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 WISCONSIN's retail customers.
- 4.5 This Agreement does not require SBC WISCONSIN to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent SBC WISCONSIN 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 build TDM capability into new or existing packet-based networks that never had TDM capability; nor does this Agreement prohibit SBC WISCONSIN 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 WISCONSIN complies with the copper loop or copper subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii), 51(319)(a)(3)(iv), and 51.325-51.335.

- 4.6 Notwithstanding anything to the contrary herein, SBC WISCONSIN's obligations with respect to routine network modifications apply only where the loop or transport transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC WISCONSIN's hybrid loops, only with respect to any existing capabilities of SBC WISCONSIN's hybrid loops. SBC WISCONSIN has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.
- 4.7 SBC WISCONSIN shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (SBC WISCONSIN), and in the state specific Appendix Pricing (SBC WISCONSIN) or by tariff, as such tariff may be modified from time to time (SBC CONNECTICUT). 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.
- 4.8 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 2.8 of this Amendment.
- 4.9 xDSL Subloop is as defined in the xDSL and Line Splitting Appendix, if any, and will be available to CLEC in the SBC WISCONSIN 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 9, 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 9, the subloop provisions set forth in Section 9 shall control.

5. Fiber Loops.

5.1 Definitions.

- (A) Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).
- (B) Fiber-to-the-curb loops. A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.

- 5.2 **New builds.** SBC WISCONSIN is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when SBC WISCONSIN deploys such a loop to a residential unit that previously has not been served by any loop facility.
- 5.3 **Overbuilds.** SBC WISCONSIN is not required to provide nondiscriminatory access to fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when SBC WISCONSIN has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

- (A) SBC WISCONSIN must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop or the fiber-to-the-curb loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless SBC WISCONSIN retires the copper loops pursuant to paragraph (a)(3)(iii) of this section.
- (B) When SBC WISCONSIN maintains the existing copper loops pursuant to paragraph (a)(3)(ii)(A) of this section, SBC WISCONSIN need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case SBC WISCONSIN shall restore the copper loop to serviceable condition upon request.
- (C) When SBC WISCONSIN retires the copper loop pursuant to paragraph (a)(3)(iii) of this section, SBC WISCONSIN shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

5.4 **Retirement of copper loops or copper subloops.** Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, SBC WISCONSIN must comply with:

- (A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and
- (B) Any applicable state requirements.

- 6. Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment 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.
- 7. Intentionally Left Blank.
- 8. In entering into this Amendment 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 (including intervening law rights asserted by either Party via written notice predating this Amendment) 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 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) ("ISP Compensation Order"), 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 this and any other amendments to the Agreement), SBC WISCONSIN 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. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly

reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC WISCONSIN has adopted the FCC ISP terminating compensation plan ("FCC Plan") in WISCONSIN, 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 WISCONSIN's right to exercise its option at any time to adopt on a date specified by SBC WISCONSIN 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 this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, 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.

9. This Amendment shall not modify or extend the effective date or term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
10. This Amendment shall be filed and is subject to approval by the Public Service Commission of Wisconsin and shall become effective ten (10) days following approval by such Commission.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 16th day of January, 2006, by the Parties, signing by and through their duly authorized representatives

Sprint Communications Company L.P.

Southwestern Bell Telephone, L.P. d/b/a SBC Wisconsin by AT&T Operations, Inc., its authorized agent

By: W. Richard Morris

By: Rebecca L Sparks

Name: W. Richard Morris
(Print or Type)

Name: Rebecca L. Sparks
(Print or Type)

Title: VP, State Reg Affairs
(Print or Type)

Title: Executive Directory-Regulatory

Date: 1-9-06

Date: JAN 16 2006

FACILITIES-BASED OCN # 8748

ACNA UTC