

AMENDMENT TO CERTAIN INTERCONNECTION AGREEMENTS UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Amendment to Certain Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") is being entered into by and between Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Southwestern Bell Telephone, L.P. d/b/a SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin (each, an "SBC ILEC", collectively, the "SBC ILECs"), and Sage Telecom, Inc. and Sage Telecom of Texas, L.P. ("CLEC", as further defined below).

WHEREAS, the SBC ILECs and CLEC are the parties to certain Interconnection Agreements ("Agreements") under Sections 251/252 of the federal Telecommunications Act of 1996 in the States of Indiana, Michigan, Texas, and Wisconsin (the "Covered States");

WHEREAS, the SBC ILECs and CLEC are the parties to that certain "Private Commercial Agreement for Local Wholesale Complete" (the "LWC Agreement"); and

WHEREAS, as a result of orders ("Orders") from the State regulatory commissions (the "State Commissions") for the Covered States, the SBC ILECs and CLEC have filed the LWC Agreement for approval under 47 U.S.C. § 252 with those State Commissions; and

WHEREAS, the SBC ILECs and CLEC have agreed to amend the LWC Agreement ("LWC Amendment") and, correspondingly, the SBC ILEC and CLEC believe that they are under an obligation to file the LWC Amendment with each State Commission for approval under 47 U.S.C. § 252.

NOW, THEREFORE, for and in consideration of the premises, mutual promises and covenants contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Attached and incorporated herein is the LWC Amendment. The LWC Amendment amends the LWC Agreement, and shall be considered and treated as part of the LWC Agreement, including without limitation for purposes of applying the distinctions between the LWC Agreement, on one hand, and any interconnection agreement and/or interconnection agreement amendment, on the other, that are made or contained in any of the foregoing.
2. In the event that a State Commission determines that the LWC Amendment is not required to be filed pursuant to 47 U.S.C. § 252, then this Amendment shall be null and void, and be automatically deemed withdrawn, in that Covered State. In the event as a result of an action by the Federal Communications Commission or a court of competent jurisdiction, the LWC Agreement and/or the LWC Amendment need not have been filed with or approved by a State Commission pursuant to 47 U.S.C. § 252, the LWC Agreement and/or LWC Amendment shall be automatically deemed withdrawn, as of the effective date of such action. Such withdrawal shall not in any way affect the effectiveness and enforceability of the LWC Agreement between any SBC ILEC and CLEC, in accordance with its terms.
3. 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 of the Orders and any remands thereof, including its rights of appeal and/or review. This Amendment does not in any way prohibit, limit, or otherwise affect either Party from taking any position with respect to any of the Orders, or from raising and pursuing its rights, remedies and arguments with respect to any Order or any other Commission order or any issue or subject addressed or implicated therein, or any legislative, regulatory, administrative or judicial action with respect to any of the foregoing.
4. Intervening Law/Change of Law
 - 4.1 In entering into this Amendment and carrying out the provisions herein, and except as may be inconsistent with the previous "Amendment Superseding Certain 251/252 Matters to Interconnection Agreements Under Sections 251 and 252 of the Telecommunications Act of 1996" ("Superseding Amendment"), 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 the current Agreements 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), the FCC's Order and Notice of Proposed Rulemaking, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004) ("Interim Order"), and the FCC's Biennial Review Proceeding; 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 the current Agreements (including this and any other amendments to any of them), the SBC ILECs 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, unless subsequently agreed to in writing between the Parties, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Amendment or the LWC Agreement or the LWC 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 any Agreements and this Amendment and except to the extent that an SBC ILEC has adopted the FCC ISP terminating compensation plan ("FCC Plan") in the Covered State in which such SBC ILEC operates, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into the Agreements, these rights also include but are not limited to the SBC ILEC's right to exercise its option at any time to adopt on a date specified by the SBC ILEC 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 the relevant Agreement (except that the reciprocal compensation provisions of the Superseding Amendment shall apply with respect to Traffic that originates from and/or terminates to an end office switch used by CLEC when SBC ILEC is the entity providing the use of the end office switch (e.g., switching capacity) to CLEC. If any effective 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 current Agreements and this Amendment (excluding the LWC Agreement and the LWC Amendment) and/or otherwise affects the rights or obligations of either Party that are addressed by the current Agreements and this Amendment (excluding the LWC Agreement and the LWC Amendment), specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be 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 current Agreements. 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 the current Agreements or future interconnection agreement(s).

4.2 Nothing in this Amendment shall affect the continued application, including the application to and under this Amendment and its provisions, of the numbered subsections of the Intervening Law/Change of Law Section of the Superseding Amendment.

4.3 Without affecting the other provisions hereof, neither the LWC Agreement nor the LWC Amendment is subject to Sections 4.1-4.2, inclusive, hereof, nor is the LWC Agreement or the LWC Amendment subject to any "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions in the Parties' current Agreements or future interconnection agreement(s).

5. Amendment Effective Date

5.1 The effective date of this Amendment in a State shall be the first business day after the State Commission for that State has approved this Amendment under Section 252(e) of the Act or, absent such Commission approval, the date this Amendment is deemed approved under Section 252(e)(4) of the Act¹ ("Amendment Effective Date"). In the event that all or any portion of this Amendment or the LWC Amendment as agreed-to and submitted is rejected and/or modified by a State Commission, 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 that State Commission.

5.2 The effective date of the LWC Amendment for a Covered State shall be the same date as the Amendment Effective Date.

6. Additional Terms and Conditions

6.1 The Parties agree that each and every term and condition of this Amendment is legitimately related to, and conditioned on, and in consideration for, every other term and condition in this Amendment. The Parties agree that they would not have agreed to this Amendment except for the fact that it was entered into on a due to the Orders, and included the totality of terms and conditions listed herein, and that it is an indivisible whole, intended to bind the SBC ILECs and CLEC.

6.2 Except as specifically modified by this Amendment with respect to their mutual obligations herein and subject to Section 4, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

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

6.4 To the extent there is a conflict or inconsistency between the provisions of this Amendment and the LWC Amendment (including its accompanying Schedule), the provisions of this Amendment shall control in the Covered States and apply but only to the extent of such conflict or inconsistency. As used in this Section 6, "this Amendment" excludes the LWC Agreement and the LWC Amendment.

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

¹ Notwithstanding anything to the contrary in any Agreement (including, as applicable, this Amendment and any other amendments to the Agreement) (collectively for this footnote, "Agreement"), the provisions hereof subsequently adopted ("MFN Provisions") by any other telecommunications carrier ("Adopting CLEC") from such Agreement (including without limitation this Amendment) shall only apply prospectively beginning from the date that the MFN provisions become effective between the SBC ILEC and the Adopting CLEC following the date the State Commission approves or is deemed to have approved the Adopting CLEC's MFN Provisions as between the SBC ILEC and Adopting CLEC ("Section 252(i) Effective Date"). In no event shall the MFN Provisions apply retroactively prior to the effective date of the adoption under Section 252(i) or the Section 252(i) Effective Date.

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

IN WITNESS WHEREOF, this Amendment was executed in duplicate on this 5th day of Jan, ²⁰⁰⁵~~2004~~.

Sage Telecom, Inc. and Sage Telecom of Texas, L.P.

Indiana Bell Telephone Company Incorporated d/b/a
SBC Indiana, Michigan Bell Telephone Company
d/b/a SBC Michigan, Southwestern Bell Telephone,
L.P. d/b/a SBC Texas, and Wisconsin Bell, Inc. d/b/a
SBC Wisconsin by SBC Telecommunications, Inc.,
its authorized agent

Signature: Robert W. McCausland

Signature: M. Auinbauh

Name: Robert W. McCausland

Name: Mike Auinbauh

Title: VP, Regulatory Affairs

Title: *For/* President -Industry Markets and
Diversified Businesses

Date: 12/30/04

Date: JAN 05 2005

FACILITIES-BASED OCN # 9813

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