

APPENDIX UNE COMBINING

1. INTRODUCTION

- 1.1 This Appendix, UNE Combining, sets forth the terms and conditions which govern the combining activities involving unbundled network elements (UNEs) to be performed by the applicable AT&T Inc. (AT&T) owned Incumbent Local Exchange Carrier (ILEC). CLEC shall not combine or use UNEs in a manner that will impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with AT&T-13STATE's network.
- 1.2 AT&T Inc. (AT&T) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a AT&T Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.
- 1.3 The terms and conditions contained in this Appendix shall supersede any conflicting terms and conditions contained within CLEC's Interconnection Agreement. CLEC's underlying contract must contain all the necessary UNEs to make any combination involving UNEs; there are no UNEs offered or otherwise provided for in this Appendix. Unless and until an amendment providing for any UNE not included in the Agreement is reached, a combination involving any such UNE cannot be ordered or implemented. This Appendix does not create, imply, or otherwise form the basis of any AT&T-13STATE obligation to unbundle any network element or to engage in any negotiations under 47 U.S.C. §§ 251, 252 or otherwise.
- 1.4 Other than as expressly set forth in this Appendix, or as contained in the Agreement and which is not superseded per Section 1.3 of this Appendix, AT&T-13STATE has no obligation to combine UNEs, or to combine a UNE with a network element possessed by CLEC.
- 1.5 As used herein, AT&T-13STATE means the applicable above listed ILECs doing business Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.6 PACIFIC -As used herein, PACIFIC means the applicable above listed ILEC doing business in California.

2. GENERAL TERMS AND CONDITIONS

- 2.1 Except upon request of CLEC, AT&T-13STATE shall not separate CLEC-requested UNEs that are currently combined. (47 CFR § 51.315(b)) AT&T-13STATE is not prohibited from or otherwise limited in separating any UNEs not requested by CLEC or a Telecommunications Carrier, including without limitation in order to provide a UNE(s) or other AT&T-13STATE offering(s).
- 2.2 AT&T-13STATE will not connect to or combine UNEs with any non-251(c)(3) or other AT&T-13STATE offering with the exception of tariffed Collocation services.
- 2.3 UNEs may not be connected to or combined with AT&T-13STATE access services or other AT&T-13STATE tariffed service offerings with the exception of tariffed Collocation services where available. CLEC shall not combine or use UNEs in a manner that will impair the ability of other Telecommunications Carriers to obtain access to Unbundled Network Elements or to Interconnect with AT&T-13STATE's network.

3. NEW COMBINATIONS INVOLVING UNEs

- 3.1 Subject to the provisions hereof and upon CLEC request, AT&T-13STATE shall meet its combining obligations involving UNEs as and to the extent required by FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. _____, No. 00-511, 2002 WL 970643 (May 13, 2002) (“*Verizon Comm. Inc.*”) and, to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other applicable law.
- 3.2 In the event that AT&T-13STATE denies a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC, AT&T-13STATE 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 the Agreement. If such dispute cannot be resolved to the mutual satisfaction of the parties, AT&T-13STATE shall initiate a proceeding before the State Commission for the State in which the combination is sought, 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 3.1 of this Appendix.
- 3.3 In accordance with and subject to the provisions of this Section 3, including Section 3.3.2 and 3.5, the new UNE combinations set forth in the Schedule(s) – UNE Combinations attached and incorporated into this Appendix UNE

shall be made available to CLEC as specified in the specific Schedule for a particular State.

3.3.1 A “Pre-existing Combination” shall not be considered a new combination involving UNEs under this Section. A “Pre-existing Combination” means a combination of UNEs where no physical work is required by AT&T-13STATE at an AT&T-13STATE premises, an outside plant location, or a customer premises, in order to establish physical connections between the UNEs that constitute the UNE combination. A Pre-existing Combination includes all orders within the definition of “Contiguous Interconnection of Network Elements.”

3.3.1.1 “Contiguous Interconnection of Network Elements” means the situation when CLEC orders all the AT&T-13STATE UNEs required either:

- (1) to convert to a combinations of UNEs an AT&T-13STATE End User customer, another carrier’s pre-existing End User customer served exclusively using UNEs, or CLEC’s or another carrier’s resale End User customer; or
- (2) if the Pre-Existing Combination includes a local loop UNE with unbundled local switching, to activate that Pre-Existing Combination for CLEC (a) without any change in features or functionality that was being provided at the time of the order, and/or (b) the only change needed to route the operator service and directory assistance (“OS/DA”) calls from the End User customer to be served by that Pre-Existing Combination to CLEC’s OS/DA platform via customized routing, and/or (c) with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service, *e.g.*, call waiting for residential local service, and/or (d) at the time of the order and when the order is worked by AT&T-13STATE, the End User customer in question is not served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, *e.g.*, the loop facility is being used to provide both a voice service and also an xDSL service. (Section 3.3.1.1(2)(b) only applies to orders involving customized routing after customized routing has been

established to CLEC's OS/DA platform from the relevant AT&T-13STATE local switch, including CLEC's payment of all applicable charges to establish that routing.)

3.3.1.2 Reconfigurations of existing qualifying special access services to combinations of unbundled loop and transport upon terms and conditions consistent with the FCC's Supplemental Order Clarification, *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000), shall not be considered a new combination involving UNEs hereunder.

3.3.2 The parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as AT&T-13STATE being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting telecommunications carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the Effective Date, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, AT&T-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Appendix UNE, subject to the following:

3.3.2.1 Section 3, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, AT&T-13STATE or CLEC from pursuing any of their respective 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 their respective rights to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by each Party. Without affecting the foregoing, this Appendix does not in any way prohibit, limit, or otherwise affect AT&T-13STATE or CLEC from taking any position with respect to combinations including UNEs or any issue or subject addressed or related thereto.

3.3.2.2 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 UNE combining obligations, AT&T-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under the Agreement and this Appendix or otherwise, and CLEC shall thereafter be solely responsible on a prospective basis for any such non-included functions or other actions, except that prior to the disconnection of any UNEs that have already been combined and being utilized/purchased by CLEC and for which AT&T-13STATE is no longer required to continue to provide, the Parties shall mutually agree upon an orderly transition of the services to prevent any disruption of such services. Upon the effective date of any regulatory, judicial, or legislative order, rule or other action setting forth new, additional, or otherwise increasing the extent of an incumbent LEC's UNE combining obligations, AT&T-13STATE shall offer such combining functions and comply with such regulatory, judicial, or legislative action, except to the extent stayed or similarly affected by a regulatory agency or court.

3.3.2.3 Without affecting the application of Section 3.3.2.2 (which shall apply in accordance with its provisions), upon notice by AT&T-13STATE, the parties shall engage in good faith negotiations to amend the Agreement and or this Appendix, to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, and to eliminate any AT&T-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, shall be resolved pursuant to the dispute resolution process provided for in the Agreement. Such a notice can be given at any time, and from time to time.

3.3.3 For a new UNE combination listed on a Schedule – UNE Combinations, its inclusion 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 UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.

- 3.3.4 For a new UNE combination listed on a Schedule – UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by AT&T-13STATE, and CLEC will be charged the applicable UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual UNE and cross connect ordered.
- 3.3.5 Upon notice by AT&T-13STATE, the parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by AT&T-13STATE in providing the new UNE combinations set forth in the Schedule(s) – UNE Combinations, which work is not covered by the charges applicable per Section 3.3.4. For any such work that is required to be done by AT&T13-STATE not included in the CLEC bona fide request, special request, or equivalent process applicable under the Agreement or this Appendix (generically referred to in this Appendix as “BFR”) under Section 3.1, 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 AT&T13-STATE, 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 the Agreement. Such a notice can be given at any time, and from time to time.
- 3.4 In accordance with and subject to the provisions of this Section 3, any request not included in Section 3.3 in which CLEC wants AT&T-13STATE to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC (as well as requests where CLEC also wants AT&T-13STATE to complete the actual combination), shall be made by CLEC in accordance with the BFR.
- 3.4.1 In any such BFR, CLEC must designate among other things the UNE(s) sought to be combined and the needed location(s), the order in which the UNEs and any CLEC elements are to be connected, and how each connection (*e.g.*, cross-connected) is to be made between an AT&T-13STATE UNE and the network element(s) possessed by CLEC.
- 3.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work that is required to be done by AT&T13-STATE not included nor originally required in the BFR submitted by CLEC, under Section 3.1. Such fee shall be

calculated using the Time and Material charges as reflected in State-specific pricing. AT&T-13STATE's preliminary substantive response to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests AT&T-13STATE to perform work not required by Section 3.1, CLEC shall be charged a market-based rate for any such work.

- 3.5 Without affecting the other provisions hereof, the UNE combining obligations referenced in this Section 3 apply only in situations where each of the following is met:
- 3.5.1 it is technically feasible, including that network reliability and security would not be impaired;
- 3.5.2 AT&T-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;
- 3.5.3 AT&T-13STATE would not be placed at a disadvantage in operating its own network;
- 3.5.4 it would not impair the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with AT&T-13STATE's network; and
- 3.5.5 CLEC is
- 3.5.5.1 unable to make the combination itself; or
- 3.5.5.2 is a new entrant and is unaware that it needs to combine certain UNEs to provide a telecommunications service, but such obligation under this Section 3.5.5.2 ceases if AT&T-13STATE informs CLEC in writing of such need to combine.
- 3.6 For purposes of Section 3.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the UNE(s) sought to be combined are available to CLEC, including without limitation:
- 3.6.1 at an AT&T-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;
- 3.6.2 for PACIFIC only, within an Adjacent Location arrangement (if provided for in the Agreement).

- 3.7 Section 3.5.5.2 shall only begin to apply thirty (30) days after written notice by AT&T-13STATE to CLEC. Thereafter, AT&T-13STATE may invoke Section 3.5.5.2 with respect to any request for a combination involving UNEs.
- 3.8 Nothing in this Appendix or the Agreement shall impose any obligation on AT&T-13STATE to provide UNEs, combinations of UNEs, or combinations of UNE(s) and CLEC's own elements beyond those obligations imposed by the Act, including the rules and orders of the FCC and *Verizon Comm. Inc.*, and to the extent not inconsistent therewith, the rules and orders of the relevant State Commission and any other Applicable Law. The preceding includes without limitation the following:
- 3.8.1 AT&T-13STATE will provide the UNE combination known as an “enhanced extended loop” or “EEL” (a combination of a UNE loop and UNE dedicated transport, with appropriate Cross-Connects, and when needed, multiplexing) shall only be provided to CLEC to the extent that the EEL is used to provide a significant amount of local exchange service to a particular End User customer (this limitation is the same as the requirements set forth in the FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000));
- 3.8.2 AT&T-13STATE will not connect to or combine UNEs with any non-251(c)(3) or other AT&T-13STATE offerings with the exception of tariffed Collocation services;
- 3.8.3 AT&T-13STATE need not provide combinations involving network elements that do not constitute required UNEs, or where UNEs are not requested for permissible purposes.

4. RESERVATION OF RIGHTS

- 4.1 In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“*USTA decision*”); the FCC's Triennial Review Order, adopted on February 20, 2003, on remand from the *USTA decision* and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338

(FCC 01-361) (rel. Dec. 20, 2001); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; or 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). Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, AT&T ILEC reserves its right to exercise its option at any time in the future to adopt on a date specified by AT&T ILEC the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions. In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding, finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, except to the extent otherwise required under Section 3.3.2.2, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party ("Written Notice"). In such event, 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 required 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 interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

5. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 5.1 The provisions of this Appendix are all legitimately related to each other and to the UNE rates, terms and conditions in the Agreement, and shall be subject to all other rates, terms and conditions contained in the Agreement which are legitimately related to this Appendix. Without limiting the general applicability of the foregoing, the following terms and conditions of the

Agreement are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.