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July 3, 2007

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

Re: Application for the Approval of an Interconnection Agreement amendment negotiated between Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and Birch Telecom of the Great Lakes, Inc.

Dear Ms. Paske:

Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and Birch Telecom of the Great Lakes, Inc. hereby request approval, pursuant to 47 U.S.C. 252, of this Interconnection Agreement amendment negotiated between Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and Birch Telecom of the Great Lakes, Inc.

I have been authorized by Birch Telecom of the Great Lakes, Inc. to submit for Commission approval, pursuant to 47 U.S.C. s 252(e), the enclosed agreement amendment.

Birch Telecom of the Great Lakes, Inc.
T. J. Sauder
Directory, Finance
2300 Main Street, Suite 600
Kansas City, MO 64108
Tel: (816) 300-3202
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Sincerely,

/S/ Sally Briar

Sally Briar

Enclosure

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
WISCONSIN BELL, INC. d/b/a AT&T WISCONSIN
AND
BIRCH TELECOM OF THE GREAT LAKES, INC.**

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, Wisconsin Bell, Inc. d/b/a AT&T Wisconsin ("AT&T Wisconsin") is no longer legally obligated to provide those network elements on an unbundled basis to Birch Telecom of the Great Lakes, Inc. ("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,¹ 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. **TRO-Declassified Elements.** Pursuant to the *TRO*, nothing in the Agreement requires AT&T Wisconsin to provide to CLEC any of the following items, 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;

¹ 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).

- (vi) line sharing;
 - (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 AT&T Wisconsin has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, for each copper loop retired pursuant to this Section, AT&T Wisconsin shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH/FTTC Loop on an unbundled basis.
2. **TRO Remand-Declassified Elements - Mass Market Unbundled Local Switching and UNE-P.** 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, whether alone, in combination (as in with “UNE-P”), or otherwise. For purposes of this Section, “Mass Market” shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or “Enterprise” level.)
- 2.1 **Transitional Provision of Embedded Base.** As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, AT&T Wisconsin shall continue to provide access to CLEC’s embedded base of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, for a transitional period of time, ending upon the earlier of:
- (a) CLEC’s disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
 - (b) CLEC’s transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
 - (c) March 11, 2006.
- AT&T Wisconsin’s transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 2.1 shall be on an “as is” basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, AT&T Wisconsin may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.
- 2.1.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Amendment, and subject to this Section 2 and subject to the conditions set forth in Section 2.1.1.1 below, AT&T Wisconsin shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, and only to the extent such items were already being provided before March 11, 2005, in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.
- 2.1.1.1 The Agreement must contain the appropriate related terms and conditions, including pricing; and the features must be “loaded” and “activated” in the switch.
- 2.2 **Transitional Pricing for Embedded Base.** Notwithstanding anything in the Agreement, during the applicable transitional period of time, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/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/UNE-P, plus one dollar. CLEC shall be fully liable to AT&T Wisconsin to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

- i. Regardless of the execution or effective date of this Amendment or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005.
- ii. CLEC shall be fully liable to AT&T Wisconsin to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

2.3 End of Transitional Period. 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 transitional period of time defined in the TRO Remand Order (March 11, 2006).

2.3.1 To the extent that there are CLEC embedded base Mass Market ULS or UNE-P [and related items, such as those referenced in Section 2.1.1 above] in place on March 11, 2006, AT&T Wisconsin, without further notice or liability, will re-price such arrangements to a market-based rate.

3. **TRO Remand-Declassified - Loop-Transport Elements.** 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;

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), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

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

3.1 **Transitional Provision of Embedded Base.** As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, AT&T Wisconsin shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the Agreement, for a transitional period of time, ending upon the earlier of:

- (a) CLEC's disconnection or other discontinuance of use of one or more of the Affected Element(s);
- (b) CLEC's transition of an Affected Element(s) to an alternative arrangement; or
- (c) March 11, 2006 (for Affected DS1 and DS3 Loops and Transport) or September 11, 2006 (for Dark Fiber Loops and Affected Dark Fiber Transport).

AT&T Wisconsin's transitional provision of embedded base Affected Element(s) under this Section 3.1 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, AT&T Wisconsin may, without further notice or liability, cease providing the Affected Element(s).

3.2 **Transitional Pricing for Embedded Base.** Notwithstanding anything in the Agreement, during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport 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 Loop-Transport Element(s), *plus 15%*.

- 3.2.1 Regardless of the execution or effective date of this Amendment or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for all Affected Loop-Transport Element(s), beginning March 11, 2005.
- 3.2.2 CLEC shall be fully liable to AT&T Wisconsin to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.
- 3.3 **End of Transitional Period.** CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (as set forth in Sections 3.3.1 and 3.3.2 below). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to AT&T WISCONSIN by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.
- 3.3.1 For Dark Fiber Loops and Affected Dark Fiber Transport, the transition period shall end on September 11, 2006.
- 3.3.2 For Affected DS1 and DS3 Loops and Transport, the transition period shall end on March 11, 2006.
- 3.3.3 To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport Elements in place on March 11, 2006, as applicable, AT&T Wisconsin, without further notice or liability, will convert them to a Special Access month-to-month service under the applicable access tariffs.
4. **Non-Impaired Wire Center Criteria and Related Processes**

- 4.1 AT&T 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 pursuant to Rule 51.319(a)(4) and Rule 51.319(a)(5) and for Tier 1 and Tier 2 Non-Impaired Wire Centers as defined pursuant to Rule 51.319(e)(3)(i) and Rule 51.319(e)(3)(ii) have been met. AT&T 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. AT&T 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 4.0 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 4.0 of this Amendment.

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 pursuant to Rule 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 pursuant to Rule 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 AT&T Wisconsin wire center non-impairment designation, the CLEC will provide a self-certification to AT&T Wisconsin identifying the wire center(s) for which it is self-certifying. In performing its inquiry, CLEC shall not be required to consider any lists of non-impaired Wire Centers compiled by AT&T Wisconsin as creating a presumption that a Wire Center is not impaired. CLEC can send a letter to AT&T Wisconsin claiming Self Certification or CLEC may elect to self-certify using a written or electronic notification sent to AT&T Wisconsin. If CLEC makes such a self-certification, and CLEC is otherwise entitled to the ordered element under the Agreement, AT&T Wisconsin

shall provision the requested facilities in accordance with CLEC's order and within AT&T Wisconsin's standard ordering interval applicable to such facilities. If AT&T Wisconsin in error rejects CLEC orders, where CLEC has provided self certification in accordance with this Section 4.0 of this Amendment, AT&T 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.

- 4.1.1 The parties recognize that wire centers that AT&T 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, AT&T Wisconsin may add the wire center to the list of designated wire centers and the Parties will use the following process:
 - 4.1.1.1 AT&T Wisconsin may update the wire center list as changes occur.
 - 4.1.1.2 To designate a wire center that had previously not met one or more of the FCC's impairment thresholds but subsequently does so, AT&T Wisconsin will provide notification to CLEC via Accessible Letter and by a posting on CLEC Online.
 - 4.1.1.3 AT&T 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.
 - 4.1.1.4 In the event the CLEC disagrees with AT&T Wisconsin's determination and CLEC has 60 calendar days from the issuance of the Accessible Letter to dispute AT&T Wisconsin's determination regarding the wire center by providing a self-certification to AT&T Wisconsin.
 - 4.1.1.5 If the CLEC does not use the self-certification process described in this Section 4.0 of this Amendment to self-certify against AT&T 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) within 30 days 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 3.2 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.
 - 4.1.1.6 If the CLEC does provide self-certification to dispute AT&T Wisconsin's designation determination within 60 calendar days of the issuance of the Accessible Letter, AT&T Wisconsin may dispute CLEC's self-certification as described in Sections 4.1.3 and 4.1.4 of this Amendment and AT&T Wisconsin will accept and provision the applicable loop and transport orders for the CLEC providing the self certification during a dispute resolution process.
 - 4.1.1.7 During the applicable transition period, the rates paid will be the rates in effect at the time of the non-impairment designations plus 15%.
- 4.1.2 If the Commission has previously determined, in any proceeding, even if CLEC was not a party to that proceeding where appropriate notice has been provided to the CLEC and where CLEC has the opportunity to participate, that a wire center is properly designated as a wire center meeting the thresholds set forth pursuant to Rule 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 AT&T Wisconsin's designations.

- 4.1.3 In the state of Wisconsin, if it desires to do so, AT&T Wisconsin can dispute the self-certification and associated CLEC orders for facilities pursuant to the following procedures: AT&T Wisconsin will notify the CLEC of its intent to dispute the CLEC's 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. AT&T 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. AT&T 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 state Commission to adopt a case schedule resulting in the prompt resolution of the dispute. AT&T 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 AT&T Wisconsin of its rights to challenge any subsequent self certification for the affected wire center except as provided below. AT&T Wisconsin shall promptly notify CLEC of any time where AT&T Wisconsin has waived its ability to challenge a self-certification as to any wire center for carrier. AT&T 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 4.1.1 of this Amendment. During the timeframe of any dispute resolution proceeding, AT&T 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:

- 4.1.3.1 For wire centers designated by AT&T Wisconsin prior to March 11, 2005 and

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

4.1.3.1.1.1 CLEC will provide true-up calculated using a beginning date of March 11, 2005 based on the FCC transitional rate described in Section 3.2 of this Amendment between March 11, 2005 and the end of the initial TRRO transition period described in Section 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 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.

- 4.1.3.1.2 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 AT&T 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

3.2 of this Amendment. The applicable equivalent special access rate/transitional rate will continue to apply until the facility has been transitioned.

4.1.3.2 For wire centers designated by AT&T Wisconsin after March 11, 2005,

4.1.3.2.1 For affected loop/transport elements ordered before AT&T Wisconsin's wire center designation,

4.1.3.2.1.1 if the applicable transition period is within the initial *TRRO* transition period described in Section 3.3 of this Amendment, CLEC will provide true-up during the period between the date that is thirty (30) days after AT&T Wisconsin's notice of non-impairment and the date the circuit is transitioned to the transitional rate described in Section 4.1.1.7 of this Amendment.

4.1.3.2.1.2 if the applicable transition period is after the initial *TRRO* transition period described in Section 3.3 of this Amendment has expired, CLEC will provide true-up based on the transitional rate described in Section 4.1.1.7 of this Amendment between the date that is thirty (30) days after AT&T STATE's notice of non-impairment and the end of the applicable transition period described in Section 4.1.1.5 and 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 4.1.1.7 of this Amendment. The applicable equivalent special access/transitional rate as described above will continue to apply until the facility has been transitioned.

4.1.3.2.2 For affected loop/transport elements ordered after AT&T STATE'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 AT&T 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 4.1.1.7 of this Amendment. The applicable equivalent special access/transitional rate will continue to apply until the facility has been transitioned.

4.1.4 In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, AT&T Wisconsin will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which AT&T Wisconsin intends to rely, which will include the detailed business line information for the AT&T Wisconsin wire center or centers that are the subject of the dispute.

4.2 The provisions of Section 3.2.2 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 3.2.2 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 AT&T Wisconsin in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (*e.g.*, prior to transition, cross connects will be billed at transitional rates, after transition, if conversion is to an access product, cross connects will be billed 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.

- 4.3 AT&T Wisconsin will process CLEC orders for DS1/DS3 High Capacity Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport conversion or disconnection. AT&T 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.
- 4.4 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
- 4.5 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 3.2.2 of this Amendment above, and if CLEC and AT&T Wisconsin have failed to reach agreement under Section 3.2.2.4 of this Amendment above as to a substitute service arrangement or element, then AT&T 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.
5. The following terms and conditions for Conversion of Wholesale Services to Lawful UNEs apply:
- 5.1 Upon request, AT&T 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.)
- 5.2 Where processes for the conversion requested pursuant to this Amendment are not already in place, AT&T Wisconsin will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 5.3 Except as agreed to by the parties or otherwise provided hereunder, AT&T 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. AT&T Wisconsin may charge applicable service order charges and record change charges.
- 5.4 This Section 6 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 or the Agreement.
- 5.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), AT&T Wisconsin may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.
- 5.5.1 This Section 5.5 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 AT&T Wisconsin service.
- 5.5.2 AT&T Wisconsin may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.

- 5.6 In requesting a conversion of an AT&T Wisconsin service, CLEC must follow the guidelines and ordering requirements provided by AT&T Wisconsin that are applicable to converting the particular AT&T Wisconsin service sought to be converted.
- 5.7 Nothing contained in this Amendment or the Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects AT&T Wisconsin's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.
6. The following terms and conditions for Commingling apply:
- 6.1 "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 AT&T 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.
- 6.1.1 "Commingled Arrangement" means the arrangement created by Commingling.
- 6.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an AT&T-12STATE offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).
- 6.1.3 Commingling is not permitted, nor is AT&T 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 AT&T Wisconsin's ability to retain responsibility for the management, control, and performance of its network; or (iii) would place AT&T Wisconsin at a disadvantage in operating its own network; or (iv) would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with AT&T Wisconsin's network.
- 6.1.4 Where processes for any Commingling requested pursuant to this Amendment (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, AT&T Wisconsin will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.
- 6.1.5 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from AT&T 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 AT&T-12STATE might offer pursuant to Section 271 of the Act.
- 6.2 Except as provided in Sections 6 and 6 and, further, subject to the other provisions of the Agreement and this Amendment, AT&T Wisconsin shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from AT&T Wisconsin to the extent required by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.
- 6.3 Upon request, and subject to Section 6 and 7, AT&T 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 AT&T Wisconsin (as well as requests where CLEC also wants AT&T Wisconsin to complete the actual Commingling), except that AT&T Wisconsin shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) Section 7.1.3 applies to the Commingled Arrangement sought by CLEC; or (ii) the CLEC is able to perform those functions itself. Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, AT&T Wisconsin's obligation to commingle ceases if AT&T Wisconsin informs CLEC of such need to Commingle.
- 6.3.1 For purposes of Section 6.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from AT&T Wisconsin are available to CLEC, including without limitation:

- 6.3.1.1 at an AT&T Wisconsin premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;
- 6.3.1.2 for AT&T CALIFORNIA only, within an adjacent location arrangement, if and as permitted by the Agreement.
- 6.3.2 Section 6.3(ii) shall only begin to apply thirty (30) days after notice by AT&T Wisconsin to CLEC. Thereafter, AT&T Wisconsin may invoke Section 6.3(ii) with respect to any request for Commingling.
- 6.4 In accordance with and subject to the provisions of Sections 6 and 7 of this Amendment, any request by CLEC for AT&T Wisconsin to perform the functions necessary to Commingle (as well as requests where CLEC also wants AT&T Wisconsin to complete the actual Commingling), shall be made by CLEC in accordance with this Amendment.
 - 6.4.1 AT&T Wisconsin is developing 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 Online.” Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.
 - 6.4.2 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 AT&T 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.
 - 6.4.2.1 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by AT&T Wisconsin under this Section 6 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. AT&T 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 AT&T Wisconsin to perform work not required by this Section 6.4, CLEC shall be charged a market-based rate for any such work.
 - 6.4.3 AT&T Wisconsin shall charge the appropriate non-recurring rates as set forth in the pricing schedule for Lawful UNEs (or Lawful UNE combinations) that are Commingled on a Lawful UNE-by-Lawful UNE basis, and for the facilities and services that are Commingled (per this Section 6) on a facility-by-facility, service-by-service basis, including without limitation for the type of service and activity being requested to create the Commingled Arrangement.
- 6.5 AT&T 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. AT&T 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.
- 6.6 Nothing in the Agreement or this Amendment shall impose any obligation on AT&T 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 AT&T 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.

- 6.7 In the event that Commingling also involves AT&T 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 the provisions of the Agreement regarding combining Lawful UNEs shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement. If no such provisions are contained in the Agreement, the Parties must first amend the Agreement to add Lawful UNE combining provisions.
- 6.8 Subject to Sections 6 and 7 of this Amendment, AT&T 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 AT&T Wisconsin.
- 6.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, AT&T-12STATE's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass AT&T-12STATE offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNEs under 47 U.S.C. § 251(c)(3).
7. The following Mandatory Eligibility Criteria for Access to Certain Lawful UNEs apply:
- 7.1 Except as provided below in this Section 8 or elsewhere in the Agreement or this Amendment and subject to this Section and any provisions in the Agreement regarding conversion of wholesale services to Lawful UNEs, AT&T 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.
- 7.1.1 "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). A DS1 or higher EEL is required to terminate in a collocation arrangement that meets the requirements of Section 7.3 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).
- 7.2 AT&T 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 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions and criteria detailed below are met with respect to the arrangement being sought:
- 7.2.1 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.
- 7.2.2 The following criteria are satisfied for each Included Arrangement, including without limitation each DS1 circuit, each DS3 circuit, each DS1 EEL and each DS1 equivalent circuit on a DS3 EEL:
- 7.2.2.1 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 AT&T 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

- 7.2.2.2 Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
- 7.2.2.3 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
- 7.2.2.4 Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 7.3 of this Amendment; and
- 7.2.2.5 Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 7.4 of this Amendment; and
- 7.2.2.6 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 7.4 of this Amendment; and
- 7.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, AT&T 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 6.3 of this Amendment. Section 6.2 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 6.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

- 7.3 A collocation arrangement meets the requirements of Section 7 of this Amendment if it is:
 - 7.3.1 Established pursuant to Section 251(c)(6) of the Act and located at AT&T Wisconsin's premises within the same LATA as the End User's premises, when AT&T Wisconsin is not the collocator; or
 - 7.3.2 Located at a third party's premises within the same LATA as the End User's premises, when AT&T Wisconsin is the collocator.
- 7.4 An interconnection trunk meets the requirements of Sections 7.2.2.5 and 7.2.2.6 of this 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.
- 7.5 For a new circuit to which Section 7.2 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 7.2.2.1, Section 7.2.2.2, and/or Section 7.2.2.3, respectively. In such case, CLEC shall satisfy Section 7.2.2.1, Section 7.2.2.2, and/or Section 7.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after AT&T Wisconsin provisions such new circuit. CLEC must provide AT&T Wisconsin with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.
 - 7.5.1 Section 7.5 does not apply to existing circuits to which Section 7.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 7.2.2.1, Section 7.2.2.2, and Section 7.2.2.3 requirements for existing circuits at the time it initiates the ordering process).

- 7.6 CLEC hereby agrees that by submitting an order to AT&T Wisconsin for an Included Arrangement (whether new, as a result of a requested conversion, or otherwise), CLEC is certifying that it meets and will continue to meet the requirements of Section 7 as to such Included Arrangement(s) on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. Such certification-by-order shall have the same weight and effect as a separate certification, and certification-by-order shall not diminish or otherwise affect CLEC's obligation to meet and to continue to comply with the criteria or certification requirements set forth in this Section 7.
- 7.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with AT&T Wisconsin.
- 7.7 In addition to any other audit rights provided for this Agreement and those allowed by law, AT&T 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 7. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon AT&T Wisconsin's written notice that an audit will be performed for that State, subject to Section 7.7.4 of this Section.
- 7.7.1 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.
- 7.7.2 The independent auditor's report will conclude whether CLEC complied in all material respects with this Section 7.
- 7.7.3 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.
- 7.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 7, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services, (and AT&T Wisconsin may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to AT&T 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 7 for that UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, *e.g.*, AT&T 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.
- 7.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 7, CLEC must reimburse AT&T Wisconsin for the cost of the independent auditor and for AT&T Wisconsin's costs in the same manner and using the same methodology and rates that AT&T Wisconsin is required to pay CLEC's costs under Section 7.7.4.2.
- 7.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 7, AT&T 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.).
- 7.7.5 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.

- 7.8 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 7 in all cases and, further, the failure of AT&T Wisconsin to require such compliance, including if AT&T Wisconsin provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 7, 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.
8. The following terms and conditions for routine network modifications to Lawful UNE Local Loops apply:
- 8.1 AT&T Wisconsin shall make routine network modifications to Lawful UNE Local Loop facilities used by requesting telecommunications carriers where the requested Lawful UNE Local Loop facility has already been constructed. AT&T Wisconsin shall perform routine network modifications to Lawful UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
- 8.2 A routine network modification is an activity that AT&T Wisconsin regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own retail customers, under the same conditions and in the same manner that AT&T Wisconsin does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable and installing equipment casings. AT&T Wisconsin will place drops in the same manner as it does for its own customers.
- 8.3 Routine network modifications do not include constructing new Lawful UNE Loops; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; installing new terminals; removing or reconfiguring packetized transmission facility. AT&T Wisconsin is not obligated to perform those activities for a requesting telecommunications carrier.
- 8.4 AT&T 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 AT&T Wisconsin's retail customers.
- 8.5 AT&T Wisconsin has no obligation to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability.
- 8.6 Notwithstanding anything to the contrary herein, AT&T Wisconsin's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or FTTC loops.
- 8.7 AT&T Wisconsin shall provide routine network modifications at the rates, terms and conditions set out in this Appendix, and in Appendix Pricing. AT&T Wisconsin will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T Wisconsin is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T Wisconsin include, but are not limited to: (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf, and (iv) in AT&T-California only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.
9. The following terms and conditions for routine network modifications to Lawful UNE Dedicated Transport apply:
- 9.1 AT&T Wisconsin shall make routine network modifications to Lawful UNE Dedicated Transport facilities used by requesting telecommunications carriers where the requested Lawful UNE Dedicated Transport

facilities have already been constructed. AT&T Wisconsin shall perform routine network modifications to Lawful UNE Dedicated Transport facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Dedicated Transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

- 9.2 A routine network modification is an activity that AT&T Wisconsin regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of cable and deploying a multiplexer or reconfiguring an existing multiplexer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier, and AT&T Wisconsin is not obligated to perform those activities for a requesting telecommunications carrier.
- 9.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. AT&T Wisconsin is not obligated to perform those activities for a requesting telecommunications carrier.
- 9.4 AT&T 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 AT&T Wisconsin's own customers.
- 9.5 Notwithstanding anything to the contrary herein, AT&T Wisconsin's obligations with respect to routine network modifications apply only where the dedicated transport transmission facilities are subject to unbundling.
- 9.6 AT&T-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (AT&T-12STATE), and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff, as such tariff may be modified from time to time (AT&T CONNECTICUT). AT&T-13STATE will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T Wisconsin is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T Wisconsin include, but are not limited to: (i) splicing and (ii) in AT&T California only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.
10. The following terms and conditions for routine network modifications to Dark Fiber Dedicated Transport apply:
- 10.1 AT&T-12STATE shall make routine network modifications to Lawful UNE Dedicated Transport Dark Fiber used by requesting Telecommunications Carriers for the provision of Telecommunication Services where the requested Lawful UNE Dedicated Transport Dark Fiber facilities have already been constructed. AT&T-12STATE shall perform routine network modifications to Lawful UNE Dedicated Transport Dark Fiber in a nondiscriminatory fashion, without regard to whether such fiber being accessed was constructed on behalf, or in accordance with the specifications, of any Telecommunications Carrier.
- 10.2 A routine network modification is an activity that AT&T-12STATE regularly undertakes for its own customers. Routine network modifications do not include the installation of fiber for a requesting Telecommunications Carrier, nor do routine network modifications include the provision of electronics for the purpose of lighting dark fiber (i.e., optronics), and AT&T-12STATE is not obligated to perform those activities for a requesting Telecommunications Carrier.
- 10.3 Routine network modifications do not include constructing new Lawful UNE Dedicated Transport Dark Fiber; installing new cable; securing permits or rights-of-way; constructing and/or placing new manholes or conduits; or installing new terminals. AT&T Wisconsin is not obligated to perform those activities for a requesting telecommunications carrier.

- 10.4 AT&T 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 AT&T Wisconsin's own customers.
- 10.5 Notwithstanding anything to the contrary herein, AT&T Wisconsin's obligations with respect to routine network modifications apply only where the dark fiber transport transmission facilities are subject to unbundling.
- 10.6 AT&T-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (AT&T-12STATE), and in the state specific Appendix Pricing (AT&T-12STATE) or by tariff, as such tariff may be modified from time to time (AT&T CONNECTICUT). AT&T Wisconsin will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which AT&T Wisconsin is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all AT&T states include: dark fiber transport splicing. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.
11. 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.
12. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
13. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
14. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
15. Amendment shall be filed with 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 duplicate on this 25th day of June, 2007, by the Parties, signing by and through their duly authorized representatives

Birch Telecom of the Great Lakes, Inc.

By: T.J. Sander

Printed: T.J. Sander

Title: Director - Finance
(Print or Type)

Date: 6/18/07

Wisconsin Bell, Inc. d/b/a AT&T Wisconsin by AT&T Operations, Inc., its authorized agent

By: Rebecca L. Sparks

Printed: Rebecca L. Sparks

Title: Executive Director - Regulatory

Date: JUN 25 2007

FACILITIES-BASED OCN # 1747

ACNA VLK