

**TRIENNIAL REVIEW AMENDMENT TO  
INTERCONNECTION AGREEMENT  
BETWEEN  
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI  
  
AND  
XO Communications, Inc.**

This Amendment is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and XO Communications, Inc. ("CLEC").

WHEREAS, SBC Missouri and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Act"), as may have been amended prior to the date hereof (the "Agreement");

WHEREAS, the Federal Communications Commission ("FCC") released an order on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, pursuant to the terms of the Parties' Agreement, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO **and to ensure that the Agreement's terms and conditions may be subsequently updated to provide only for lawful access to unbundled network elements;** and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth in the TRO Attachment attached hereto. The TRO Attachment shall apply notwithstanding other provisions contained in the Agreement, SBC Missouri tariff or an SBC Missouri Statement of Generally Available Terms and Conditions ("SGAT"), **if any, unless, at CLEC's option, it orders from an SBC Missouri tariff or SGAT.** References to this Amendment shall include the TRO Attachment, and the following Appendices to this Amendment: [specify].
2. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not necessarily be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2. **By way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including; e.g., interconnection, those terms and conditions will be "conflicting" with the terms and conditions in the Attachment that provides for the Declassification of such UNE (see, e.g., Section 1.3.4) or that provide that the UNE has already been Declassified. Further, by way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including, e.g., interconnection, those terms and conditions will be "conflicting" with the terms and**

conditions in the Attachment that provide that SBC Missouri shall not be obligated to provide an unbundled network element that is not or is no longer a Lawful UNE.

3. Without limiting the effect of Section 2, above, certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in the TRO Attachment attached to this Amendment, as is more specifically set forth in the TRO Attachment. It is the Parties' intent that substance shall control over form. **The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement. By way of further example only, if a pricing schedule includes a UNE that is Declassified or not Lawful pursuant to the terms and conditions of this Attachment, the inclusion of the UNE in the pricing schedule shall be of no effect and the UNE will not be available under the Agreement**
4. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Sections 1, 2 and 3, above. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement." Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
5. Stay or Reversal of the TRO. Notwithstanding any contrary provision in the Agreement, this Amendment, the Parties' tariffs or any SBC Missouri SGAT, nothing contained in this Amendment shall limit either Parties' right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the \*State Commission\*, the FCC, any court or any other governmental authority related to, concerning or that may affect either Parties' obligations under the Agreement, this Amendment, a tariff, SBC Missouri SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit.
  - a. Notwithstanding any other change of law provision in the Agreement, this Amendment, tariff or any SBC Missouri SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse and vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed and vacated provisions shall be voidable at the written election of either Party, **or, at the Party's option, as otherwise provided in the Attachment.**
  - b. Except as provided in Section 1.3, should the D.C. Circuit or the United States Supreme Court remand any or all of the TRO's provisions to the FCC for further proceedings without vacating those provisions, the terms and conditions of this Amendment that relate to the remanded provisions shall remain in effect during the pendency of the remand proceeding, **unless they are otherwise rendered invalid or are modified by a change in law event or as set forth in Section 1.3 of the Attachment, in which case the terms and conditions of the Attachment, including Section 1.3, and/or the Amended Agreement (e.g. any applicable change in law or intervening law provisions) with respect to such eventualities shall apply. In the event of a stay, or reversal and vacatur, CLEC shall purchase and access UNEs and related services in accordance with the terms**

**of the Agreement and the remaining effective terms of this Amendment, and/or, at CLEC's option, SBC Missouri's tariffs and SGATs.**

6. Notwithstanding anything in this Agreement or in any Amendment, or any SBC Missouri tariff, SBC Missouri shall have no obligation to provide access to unbundled network elements under the terms of the Amended Agreement beyond those required by the Act, including lawful and effective FCC rules and associated FCC and judicial orders, or where Lawful UNEs are not requested for permissible purposes.
7. Any performance measures and remedies identified in the Agreement apply solely to Lawful UNEs which SBC Missouri is obligated to offer under Section 251(c)(3) of the Act. If a UNE is Declassified or where a network element is no longer a Lawful UNE, SBC Missouri will have no obligation to report on or pay remedies for any measures associated with such network element, notwithstanding any language to the contrary in the Agreement.
8. To the extent they are not inconsistent with the terms and conditions set forth below applicable to other UNEs, the terms and conditions of the Agreement related to the Network Interface Device UNE shall continue to govern.
9. Where processes for any UNE requested pursuant to this Agreement are not already in place, the Parties will comply with any applicable Change Management guidelines and Applicable Law.
10. This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather shall be coterminous with the underlying Agreement.
11. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Inter-carrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited,

to any rights each may have as a result of the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC Missouri has adopted the FCC ISP terminating compensation plan ("FCC Plan"), and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC Missouri's right to exercise its option at any time to adopt on a date specified by SBC Missouri the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

12. This Amendment shall be filed with and is subject to approval by the Public Service Commission of Missouri, and shall become effective ten (10) days following approval by such Commission.

This Triennial Review Amendment amends the Interconnection Agreement between Southwestern Bell Telephone, L.P., dab SBC Missouri ("SBC Missouri"), and XO Communications, Inc. ("CLEC").

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the date set forth below.

**CLEC**

**SBC MISSOURI**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

FOR INFORMATIONAL PURPOSES ONLY