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OCT 26 2004

**Missouri Public
Service Commission**

INTERCONNECTION AGREEMENT (13-STATE)

BETWEEN

SBC ADVANCED SOLUTIONS, INC.

AND

NEW EDGE NETWORK, INC. d/b/a NEW EDGE NETWORKS

Version 2.0 mr

02/09/04

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INTERCONNECTION AGREEMENT (SBC-ASI/13-STATE)

This Interconnection Agreement (the "Agreement") under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), is entered by and between the Company as here and after defined SBC Advanced Solutions, Inc ("SBC-ASI/13State"), and **New Edge Network, Inc. d/b/a New Edge Networks** ("CLEC" or "Customer"). This Agreement shall apply to the state(s) of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin, in territories where an Affiliate of **SBC-ASI/13State** is the incumbent local exchange carrier.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other Services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

WHEREAS, CLEC, a competitive Local Exchange Carrier has, or prior to the provisioning of any Service hereunder will have been, authorized to provide certain intraLATA wireline Telecommunication Services identified under the Merger Order as Advanced Services in the state(s) governed by this Agreement by the appropriate State Commission(s);

NOW, THEREFORE, the Parties hereby agree as follows:

GENERAL TERMS AND CONDITIONS

SCOPE OF THE AGREEMENT

- 1.0 This Agreement is offered by **SBC-ASI/13State's** under Section 251 of the Act as interpreted by the D.C. Court of Appeals in the *Association of Communications Enterprises v. FCC*, 235 F3d 662 (D.C. Cir. 2001) (the "ASCENT Decision"), the FCC's Triennial Review Order, released on August 21, 2003 and effective October 2, 2003, and in anticipation of the Federal Communications Commission ("FCC") issuing an order to address this issue as discussed in Footnote 768 of the Kansas/Oklahoma 271 Order, FCC 01-29 released January 22, 2001. In the event the FCC issues a decision that imposes requirements affecting the terms and conditions in this Agreement, or that the terms and conditions contained in this Agreement do not comply with the ASCENT Decision or the Triennial Review Order, either Party may exercise its rights under the Intervening Law provisions set forth in **Section 22** of this Agreement.

2.0 DEFINITIONS

For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

2.1 General Definitions

- 2.1.1 **"Act"** means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 2.1.2 **"Affiliate"** is as defined in the Act.
- 2.1.3 **"Applicable Law"** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 2.1.4 **"Business Day"** means Monday through Friday, excluding holidays on which the SBC-ASI/13State does not provision new retail Services and products.
- 2.1.5 **"Claim"** means any pending or threatened claim, action, proceeding or suit.
- 2.1.6 **"Commission"** means the applicable State agency with regulatory authority over Telecommunications. Unless the context otherwise requires, use of the term **"Commissions"** means all of the thirteen agencies listed in this Section. The following is a list of the appropriate State agencies:

Arkansas Public Service Commission (AR-PSC);
Public Utilities Commission of the State of California (CA-PUC);

**Connecticut Department of Public Utility Control (DPUC);
Illinois Commerce Commission (IL-CC);
Indiana Utilities Regulatory Commission (IN-URC);
Kansas Corporation Commission (KS-CC);
Michigan Public Service Commission (MI-PSC);
Missouri Public Service Commission (MO-PSC);
Public Utilities Commission of Nevada (NV-PUC);
Public Utilities Commission of Ohio (PUC-OH);
Oklahoma Corporation Commission (OK-CC);
Public Utility Commission of Texas (PUC-TX); and
Public Service Commission of Wisconsin (PSC-WI)**

- 2.1.7 **"Company"** means SBC Advanced Solutions, Inc., Ameritech Advanced Data Services of Illinois, Inc., Ameritech Advanced Data Services of Indiana, Inc., Ameritech Advanced Data Services of Ohio, Inc., Ameritech Advanced Data Services of Michigan, Inc., Ameritech Advanced Data Services of Wisconsin, Inc., collectively referred to as SBC Advanced Solutions, Inc. ("SBC-ASI/13 State").
- 2.1.8 **"End Users"** means a third-party subscriber to Telecommunications Services provided by any of the Parties at retail. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or Service obtained under this Agreement.
- 2.1.9 **"FCC"** means the Federal Communications Commission.
- 2.1.10 **"Generally Available Terms and Conditions"** or "GATC" means the SBC Advanced Solutions, Inc. Advanced Telecommunications Services Generally Available Terms and Conditions published at www.sbc.com . Tariffs mean the published schedule of rates, terms, and conditions filed with the State Regulatory Commission in the State where Service is provided. The GATC's and tariffs are subject to change. Service rates and terms are governed by the version of the tariff or GATC in effect at the time the order or renewal request is placed. Out of term rates, terms, and conditions are subject to change monthly.
- 2.1.11 **"Incumbent Local Exchange Carrier" (ILEC)** is as defined in the Act.
- 2.1.12 **"Interconnection"** is as defined in the Act.
- 2.1.13 **"Interexchange Carrier" (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

2.1.14 **"Internet Service Provider" (ISP)** is a provider of enhanced service and information services as described in paragraph 341 in FCC 97-158 in CC Docket No. 262.

2.1.15 **"Loss" or "Losses"** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

2.1.16 **"Network Element"** is as defined in the Act.

2.1.17 **"Party"** means either CLEC or SBC-ASI/13State. **"Parties"** means both CLEC and SBC-ASI/13State.

2.1.18 **"Point of Interconnection" (POI)** is a physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties' mutual agreement.

2.1.19 **"Services"** is defined as wireline Telecommunications Services commonly referred to in the Merger order as Advanced Services.

3.0 REGIONAL DESIGNATIONS AND STATE-SPECIFIC RATES, TERMS AND CONDITIONS

3.1 Regional Designations. When used in this Agreement, the following regional designations refer to the following states:

Region	States
ASI-Southwest	Arkansas, Kansas, Missouri, Oklahoma, Texas
ASI-West	California, Nevada
ASI-Midwest	Illinois, Indiana, Michigan, Ohio, Wisconsin
ASI-East	Connecticut

3.2 State-Specific Rates, Terms and Conditions. For ease of administration, this 13-State Agreement contains certain specified rates, terms and conditions that apply only in a designated state ("State-Specific Terms"). To the extent that this Agreement contains specified rates, terms and conditions that apply only in a given state, such rates, terms and conditions shall not apply and shall have no effect in any other state(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

3.3 State-Specific Terms, have been negotiated (or included in the Agreement per state requirement) by the Parties only as to the states where this Agreement has been

executed, filed and approved. When the Parties negotiate an Agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating State-Specific terms for the state in which such terms are to apply.

4.0 TERM, TERMINATION, DEFAULT, AND EFFECTIVE DATE

- 4.1 The initial term of the Agreement commences on the Effective Date, as defined below, and shall expire on November 15, 2005 unless sooner terminated as provided herein. Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on or after the expiration of the Term until terminated by either Party on 30 days notice.
- 4.2 The Effective Date is ten (10) calendar days after the appropriate State Commission approves this Agreement under Section 252(e) of the Act, or absent such Commission approval, the date ten (10) calendar days after this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 4.3 This Agreement is subject to all Applicable Laws, regulations, rules and orders. **SBC-ASI/13State** and the Services may be regulated by certain rules, regulations, and orders of state or federal regulatory agencies or may be subject to certain requirements as set forth in the Act. If this Agreement, or any part thereof, is subsequently deemed, or **SBC-ASI/13State**, at its sole reasonable discretion, believes this Agreement, or any part thereof, to be in conflict with any such rules, regulations or orders, **SBC-ASI/13State** may to that extent terminate or modify this Agreement without liability.
- 4.4 In the event CLEC defaults in any material obligation hereunder, and CLEC has not remedied such default within 30 calendar days of receipt of written notice from **SBC-ASI/13State**, **SBC-ASI/13State** may, in addition to other remedies, discontinue work on any service orders in process and may refuse to accept any new orders for Service. In addition, **SBC-ASI/13State** may disconnect any existing Service connections that are in default and CLEC will, at its sole expense, notify its End Users that their Service may be disconnected. CLEC shall cooperate in the process of End User migrations to facilitate the choices of, and minimize the impact on, CLEC's End Users.
- 4.5 If this Agreement is terminated without an existing successor Agreement between the **SBC-ASI/13State** and CLEC, **SBC-ASI/13State** and CLEC agree to cooperate in an

orderly and efficient transition of any existing Services to **SBC-ASI/13State**, another CLEC or another vendor.

5.0 NEGOTIATION OF SUCCESSOR AGREEMENT.

- 5.1 If either Party desires to negotiate a successor Agreement to this Agreement, such Party must provide the other Party with a written request to negotiate such successor Agreement ("Request to Negotiate"). A Request to Negotiate does not extend the life of this Agreement, nor does it prevent either Party from exercising its rights to terminate as specified in Section 4.0 of this Agreement.

6.0 BILLING AND PAYMENT

- 6.1 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 16 of this Agreement.
- 6.2 All billing, payment and Service discontinuance matters are found in the GATC or applicable state tariff.

7.0 DEPOSITS

- 7.1 Deposits for Services ordered and provisioned via this Agreement are subject to the terms and conditions for the Deposits in the GATC or in the applicable state tariff. Additional terms described below shall also apply.
- 7.2 Any cash deposit for one state shall be held by **SBC-ASI/13State** as a guarantee of payment of charges billed to CLEC, provided, however, **SBC-ASI/13State** may exercise its right to credit any cash deposit to CLEC's account upon the occurrence of any one of the following events:
- 7.2.1 when **SBC-ASI/13State** sends CLEC the second delinquency notification for that state during the most recent twelve (12) months; or
 - 7.2.2 when **SBC-ASI/13State** suspends CLEC's ability to process for non-payment; or
 - 7.2.3 when CLEC files for protection under the bankruptcy laws; or
 - 7.2.4 when an involuntary petition in bankruptcy is filed against CLEC and is not dismissed within sixty (60) days; or
 - 7.2.5 when this Agreement expires or terminates; or

- 7.2.6 during the month following the expiration of twelve (12) months after that cash deposit was remitted, **SBC-ASI/13State** shall credit any cash deposit to CLEC's account so long as CLEC has not been sent more than one delinquency notification letter for that state during the most recent twelve (12) months .
- 7.3 So long as CLEC maintains timely compliance with its payment obligations, **SBC-ASI/13State** will not increase the deposit amount required. If CLEC fails to maintain timely compliance with its payment obligations, **SBC-ASI/13State** reserves the right to require additional deposit(s) in accordance with **Section 7.1** and **Section 7.4** through **Section 7.7**.
- 7.4 If during the first six (6) months of operations in a state covered by this Agreement, CLEC has been sent one delinquency notification letter by **SBC-ASI/13State**, the deposit amount for that state shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing average for a two (2) month period exceeds the deposit amount held.
- 7.5 Throughout the Term, any time CLEC has been sent two (2) delinquency notification letters for any one state by **SBC-ASI/13State**, the deposit amount for that state shall be re-evaluated based upon CLEC's actual billing totals and shall be increased if CLEC's actual billing average for a two (2) month period exceeds the deposit amount held.
- 7.6 Whenever a deposit is re-evaluated as specified in **Section 7.4** and **Section 7.5**, CLEC shall remit the additional deposit amount to **SBC-ASI/13State** within thirty (30) calendar days of receipt of written notification from **SBC-ASI/13State** requiring such deposit. If CLEC fails to furnish the required deposit within thirty (30) calendar days of receipt of written notice requesting such deposit, **SBC-ASI/13State** shall be entitled to disconnect CLEC's existing Service as set forth in **Section 4** of this Agreement for that state.
- 7.7 This cash deposit requirement may be satisfied in whole or in part with an irrevocable bank letter of credit acceptable. No interest shall be paid by **SBC-ASI/13State** for any portion of the deposit requirement satisfied by an irrevocable bank letter of credit. **SBC-ASI/13State** may demand payment from the issuing bank of any irrevocable bank letter of credit upon the occurrence of any of the events listed in **Section 7.2.1** through **Section 7.2.4**.
- 8.0 TAXES
- 8.1 Taxes for Services ordered and provisioned via this Agreement are subject to the terms and conditions of the Taxes section of the GATC.
- 9.0 UNLAWFUL USE

- 9.1 Unlawful Use of the Services provided via this Agreement shall be governed by the terms and conditions in the Use of Service section of the GATC.
- 9.2 When such unlawful use occurs, **SBC-ASI/13State** may terminate the Services being used in an abusive manner with no liability, and CLEC shall indemnify, defend and hold harmless the **SBC-ASI/13State** from and against any Claim, Loss or damage arising out of such use.

10.0 MISDIRECTED CALLS

During **SBC-ASI/13State's** normal business hours, for all misdirected calls to **SBC-ASI/13State** from CLEC's End Users, CLEC's End Users will be directed to call their provider. To the extent **SBC-ASI/13State** procedures change such that CLEC End Users become identifiable, such CLEC End Users will be directed to call CLEC at a designated 800 number. CLEC on a reciprocal basis will refer to a **SBC-ASI/13State** designated number all misdirected calls that CLEC receives from **SBC-ASI/13State** End Users. CLEC and **SBC-ASI/13State** will agree on the scripts to be used for this purpose.

11.0 WARRANTY, MAINTENANCE AND LIMITATION OF LIABILITY

- 11.1 **SBC-ASI/13-STATE WARRANTS THAT THE SERVICE WILL BE INSTALLED AND MAINTAINED IN GOOD WORKING ORDER AND THAT THE SERVICE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE REQUIREMENTS OF THIS AGREEMENT.**
- 11.2 **THIS WARRANTY DOES NOT COVER REPAIRS FOR DAMAGES CAUSED BY ANY NEGLIGENCE, ACT OR OMISSION OF CLEC OR ITS END USER OR THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. EXCEPT AS SPECIFICALLY PROVIDED FOR IN SECTION 11.1 ABOVE WITH RESPECT TO SERVICE, SBC-ASI/13-STATE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICE, INTERCONNECTION, COLLOCATION, OR NETWORK ELEMENTS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 11.3 **SBC-ASI/13-STATE'S SOLE LIABILITY, WHETHER IN CONTRACT OR IN TORT, INCLUDING SBC-ASI/13STATE'S NEGLIGENCE OR STRICT LIABILITY, FOR ANY FAILURE, DEFECT, ERROR, LOSS, OR OMISSION IN THE PROVISION OF THE SERVICE ("SERVICE INTERRUPTION"), INTERCONNECTION, COLLOCATION, OR NETWORK ELEMENTS, OF ANY KIND INCLUDING, BUT NOT LIMITED TO, SERVICE INTERRUPTION ALLEGED TO BE CAUSED BY CLEC'S DEFECTIVE**

EQUIPMENT OR CLEC'S END USER OWNED OR PROVIDED EQUIPMENT OR END USER PREMISES EQUIPMENT ("CUSTOMER EQUIPMENT"), EVEN IF PROVIDED OR INSTALLED BY SBC-ASI/13-STATE, IS LIMITED TO REFUND OF THE PROPORTIONATE CHARGE BY SBC-ASI/13STATE FOR THE PERIOD DURING WHICH THE SERVICE, INTERCONNECTION, COLLOCATION OR NETWORK ELEMENT WAS AFFECTED.

11.4 IN NO EVENT WILL SBC-ASI/13-STATE BE LIABLE TO CLEC, UNDER ANY CIRCUMSTANCES, FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS AND LOSS OF DATA, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

11.5 SBC-ASI/13-STATE RESERVES THE RIGHT TO TEMPORARILY SUSPEND SERVICE TO ALLOW FOR MAINTENANCE.

12.0 INDEMNITY, INSURANCE AND FRAUD

12.1 As to the Services, CLEC shall indemnify, defend and hold harmless SBC-ASI/13State, its parents, Affiliates and subsidiaries, and their respective, officers, directors, employees, agents, successors and assigns from and against any Claim, Loss or damage involving:

12.1.1 Claims for libel, slander, invasion of privacy, or infringement of copyright arising from CLEC's own communications;

12.1.2 Claims for patent infringement arising from CLEC's acts of combining or using the Services in connection with Customer Equipment; or

12.1.3 All other Claims arising out of any act or omission of CLEC or arising from CLEC's material breach of this Agreement.

12.2 As to the Services, SBC-ASI/13State shall indemnify, defend and hold harmless CLEC from and against:

12.2.1 Any Claim or threat of Claim brought by a third party which arises out of any Claim or suit for direct damages or relief on account of injury to or death of any person or damage to tangible personal or real property caused solely by SBC-ASI/13State's negligence or willful misconduct in the course of SBC-ASI/13State's performance under this Agreement.

- 12.2.2 Any Claim or threat of Claim brought by any third party alleging the Services infringe such party's patents, trademarks or copyright ("Intellectual Property"), provided that CLEC: (a) followed **SBC-ASI/13State's** reasonable instructions for use of any Intellectual Property associated with the Services; (b) did not modify the Services; (c) notifies **SBC-ASI/13State** promptly and in writing of any such Claims; and (d) cooperates with and permits **SBC-ASI/13State** to control the defense, settlement or other handling of such Claim or threatened Claim. **SBC-ASI/13State** shall not be responsible for any Claims resulting from CLEC's combination of the Services with other products or Services or Customer Equipment. If one (1) or more of the Services shall be found not to conform to any Intellectual Property warranty, CLEC's sole remedy against **SBC-ASI/13State** shall be, at **SBC-ASI/13State's** option, for **SBC-ASI/13State** to: (a) defend CLEC against such infringement Claim; or (b) to substitute other functionally equivalent **SBC-ASI/13State** Services.
- 12.3 CLEC acknowledges that its right under this Agreement to interconnect with **SBC-ASI/13State's** network may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.
- 12.4 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 12.4.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.
- 12.4.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
- 12.4.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

- 12.5 Each Party shall require subcontractors providing Services under this Agreement to maintain in force the insurance coverage and limits required in **Sections 12.4** of this Agreement.
- 12.6 The Parties agree that companies affording the insurance coverage required under **Section 12.4** shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 12.7 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 12.8 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 12.8.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
- 12.8.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 12.8.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 12.9 **SBC-ASI/13State** shall not be liable to CLEC for any fraud associated with CLEC's End Users.
- 13.0 **FORCE MAJEURE**
- 13.1 **SBC-ASI/13State** will not be liable for any Loss or damage resulting from any cause beyond **SBC-ASI/13State's** reasonable control, such as, but not limited to, fire, explosion, lightning, flood, earthquake, power surges or failures, strikes or

labor disputes, floods, storms, tornadoes, acts of war, civil disturbances, acts of civil or military authorities or the public enemy, delays caused by CLEC, Customer Equipment or CLEC service or equipment vendors or any other cause beyond **SBC-ASI/13State's** control.

- 13.2 On the occurrence of any such event and to the extent such occurrence interferes with **SBC-ASI/13State's** obligation under this Agreement, **SBC-ASI/13State** will be excused from such obligations during the period of such interference, provided that **SBC-ASI/13State** uses all reasonable efforts available to **SBC-ASI/13State** to avoid or remove such causes of inability to meet such obligation.

14.0 TARIFF AND/OR GENERALLY AVAILABLE RATES, TERMS AND CONDITIONS REFERENCES

- 14.1 Where tariff and/or GATCs provisions are incorporated in this Agreement by reference, and those provisions conflict with this Agreement in whole or in part, the tariff and/or GATCs provisions will govern to the extent of the conflict.
- 14.2 Wherever any tariff and/or GATCs provision or rate is cited, quoted, or incorporated by reference herein, it is understood that said cite encompasses any revisions or modifications to said tariff and/or the GATCs. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder on the date any such change is effective.
- 14.3 Wherever any tariff and/or GATC provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state in which that tariff and/or GATC applies.

15.0 CONFIDENTIALITY AND PROPRIETARY INFORMATION

- 15.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 15.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 15.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
 - 15.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
 - 15.2.3 Is rightfully received from a third party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially

reasonable efforts to determine whether such third party has any such obligation; or

- 15.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of Services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 15.2.5 Is disclosed to a third party by the Disclosing Party without similar restrictions on such third party's rights; or
 - 15.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
 - 15.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process when reasonable prior notice is provided to the Disclosing Party. Reasonable will be defined given the circumstances of each case.
- 15.3 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.
- 15.4 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

16.0 DISPUTE RESOLUTION

- 16.1 Alternative to Litigation. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedure with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.

16.2 Billing Disputes.

16.2.1 The Parties will endeavor to resolve the dispute within thirty (30) calendar days of the Payment Date on which such disputed charges are due.

16.2.2 If any portion of an amount due to **SBC-ASI/13State** for Services or under this Agreement is subject to a bona fide dispute between the Parties, CLEC shall place all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. To be acceptable, the third party escrow agent must meet all of the following criteria:

16.2.3 The financial institution proposed as the third party escrow agent must be located within the continental United States;

16.2.4 The financial institution proposed as the third party escrow agent may not be an Affiliate of either Party; and

16.2.5 The financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.

16.2.6 In addition to the foregoing requirements for the third party escrow agent, CLEC and the financial institution proposed as the third party escrow agent must agree that the escrow account will meet all of the following criteria:

16.2.6.1 The escrow account must be an interest bearing account ;

16.2.6.2 All charges associated with opening and maintaining the escrow account will be borne by CLEC;

16.2.6.3 That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the third party escrow agent;

16.2.6.4 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and

16.2.6.5 Disbursements from the escrow account shall be limited to those:

16.2.6.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or

16.2.6.5.2 made in accordance with the final order resolving the dispute.

16.2.6.6 Following resolution of the dispute, the Parties shall cooperate to ensure that all of the following actions are taken:

16.2.6.6.1 To the extent the dispute is resolved in favor of CLEC, **SBC-ASI/13State** shall credit the invoice of CLEC for that portion of the Disputed Amounts resolved in favor of CLEC, together with any Late Payment Charges assessed with respect thereto no later than the second Payment Date after the resolution of the Dispute and within fifteen (15) calendar days after resolution of the Dispute, **SBC-ASI/13State** shall authorize the escrow agent to release the portion of the escrowed Disputed Amounts resolved in favor of the CLEC, together with any accrued interest thereon;

16.2.6.6.2 To the extent the dispute is resolved in favor of **SBC-ASI/13State**, within fifteen (15) calendar days after resolution of the Dispute, CLEC shall authorize the escrow agent to release the portion of the Disputed Amounts resolved in favor of **SBC-ASI/13State** to **SBC-ASI/13State**, together with any accrued interest thereon and no later than the third Bill Due Date after the resolution of the dispute regarding the Disputed Amounts, CLEC shall pay **SBC-ASI/13State** the difference between the amount of accrued interest such **SBC-ASI/13State** received from the escrow disbursement and the amount of Late Payment Charges such **SBC-ASI/13State** is entitled to receive pursuant to this Agreement.

16.3 Formal Resolution of Disputes.

16.3.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement which require clarification, renegotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the appropriate state Commission. Also, upon mutual Agreement, the Parties may seek commercial binding arbitration as specified in Section 16.4.

16.3.2 The Parties agree that the dispute resolution procedures set forth in this Agreement are not intended to conflict with the applicable provisions of the Act or of the appropriate state Commission with regard to procedures for the resolution of disputes arising out of this Agreement.

16.4 Arbitration.

When both Parties agree to binding arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. When the dispute relates to multiple states, the arbitration will be held in San Antonio, Texas, unless the Parties agree otherwise. When the dispute relates to only one state, the arbitration will be held in the capital city of that state, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures other than the fees of the arbitration and the arbitrator, which will be split equally between the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

17.0 LAW ENFORCEMENT AND CIVIL PROCESS

- 17.1 Law Enforcement and Civil Process for Services ordered and provisioned via this Agreement are subject to the terms and conditions of the Law Enforcement and Civil Processes section of the GATC.

18.0 GENERAL PROVISIONS

- 18.1 Non-Waiver. The failure of **SBC-ASI/13State** or CLEC to insist upon strict performance of any provision of this Agreement in any one (1) or more instances will not be construed as a waiver or relinquishment for the future of any such provision, but the same will be and remain in full force and effect.
- 18.2 Headings. Section headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.
- 18.3 Notices. All notices or other communications hereunder will be deemed to have been fully given when made by confirmed facsimile, e-mail, or similar confirmed communication, made in writing and delivered in person, or deposited in the United States mail, postage prepaid, and addressed as follows:

To CLEC: Robert McMillin
New Edge Networks
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

To the Company: RVP-Carrier / Supplies Mgmt.
3 SBC Plaza
Suite 1502
Dallas, TX 75202
Fax: 214-858-3082

Copy to: Legal Department
SBC Advanced Solutions, Inc.
1010 N Saint Mary's
Room 14-J
San Antonio, TX 78215
Fax: 210 246-8699

Either Party may unilaterally change any of its notice information above by giving written notice to the other Party pursuant to this section. Any notice to change the notice information shall be deemed effective ten (10) calendar days following receipt by the other Party.

- 18.4 Notice of Network Changes. **SBC-ASI/13State** agrees to provide reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of Services using **SBC-ASI/13State's** network, as well as of any other changes that would affect the interoperability of **SBC-ASI/13State's** network. This Agreement is not intended to limit **SBC-ASI/13State's** ability to upgrade and maintain its network through the incorporation of new equipment, new software or otherwise so long as such upgrades are consistent with **SBC-ASI/13State's** obligations to CLEC under the terms of this Agreement.
- 18.5 Governing Law. When the dispute relates to multiple states, this Agreement will be construed in accordance with and be governed by the domestic laws of the State of Texas. If the dispute relates to only one state, this Agreement will be construed in accordance with and be governed by the domestic laws of that state.
- 18.6 Releases. Subject to any Agreement or provisions regarding collocation, neither **SBC-ASI/13State** nor CLEC will require waivers or releases of any rights from representatives of the others in connection with visits to **SBC-ASI/13State's**, CLEC's

or CLEC's End User's premises, and no such releases or waivers will be pleaded or otherwise asserted by **SBC-ASI/13State** or CLEC in any action or proceeding.

- 18.7 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of **SBC-ASI/13State** and CLEC will be construed and enforced accordingly.
- 18.8 Complete Agreement. This Agreement including any attachments, tariff and/or GATC references, schedules and addenda sets forth the complete terms and conditions applicable to the provision of Services by **SBC-ASI/13State** to CLEC, and supersedes any and all prior Agreements, arrangements, representations, or understandings relating to the subject matter hereof.
- 18.9 Assignment. Assignment of the terms and conditions of this Agreement are subject to the terms and conditions of the Limitations of Service section of the GATC. Additionally, nothing in this section is intended to impair the right of either Party to utilize subcontractors.
- 18.10 Consent. Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.
- 18.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.
- 18.12 Relationship of Parties/Independent Contractor. Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.
- 18.13 Amendments and Waivers. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and

signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition.

- 18.14 Customer of Record. SBC-ASI/13State will recognize CLEC as the Customer of Record for all Services ordered by CLEC and will send all notices, invoices and pertinent information directly to CLEC.

19.0 INTELLECTUAL PROPERTY

- 19.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

20.0 JOINT WORK PRODUCT

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

21.0 REGULATORY APPROVAL

- 21.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the Services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.
- 21.2 Unless otherwise agreed, if the designated Party fails to file this Agreement with the appropriate State commission within sixty (60) days after both Parties signatures, then this signed Agreement is null and no longer valid. In such event, the designated Party may not file this signed Agreement for approval unless it obtains the express written permission of the other Party. If the other Party objects to the filing of this signed Agreement following the expiration of the sixty (60) days referenced above, then either Party may initiate negotiations for a successor Agreement under Section 251/252 of the Act. If negotiations are commenced by either Party, then the Parties will determine what rates, terms and conditions, if any, will apply until such time as a successor Agreement is reached. In any event, upon approval of the successor Agreement by the appropriate State Commission, the rates, terms and conditions of such successor Agreement shall retroactively apply back to the expiration and/or effective termination date of the last State Commission approved Agreement

between the Parties or the effective date of any interim Agreement entered into between the Parties, whichever is earlier.

22.0 INTERVENING LAW

22.1 This Agreement is the result of negotiations between the Parties. In entering into this Agreement and any Amendments to such Agreement 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 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: 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 Associate, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, released on August 21, 2003 and effective October 2, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; 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), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), **SBC-ASI/13 State** shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. The preceding includes without limitation that **SBC-ASI/13 State** shall not be obligated to provide combinations (whether considered new or existing) or commingled arrangements involving **SBC-ASI/13 State** network elements that do not constitute required UNEs under 47 U.S.C. § 251 (c) (3) (including those network elements no longer required to be so unbundled), or where UNEs are not requested for permissible purposes. 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/or Amendment(s) to this Agreement, and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and/or Amendment(s) to this Agreement, 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"). In such event, the Parties shall expend diligent efforts to arrive at an Agreement regarding the appropriate conforming modifications to this Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, **SBC-ASI/13State** is no longer required by Applicable Law to provide any Service, facility or Interconnection specified in the Agreement, then **SBC-ASI/13State** may discontinue the provision of any such Service, facility or Interconnection upon thirty (30) days prior written notice to CLEC, unless a longer notice period is specified in this Agreement (including, but not limited to, in an applicable Tariff and/or GATC) or Applicable Law for termination of such Service, facility or Interconnection in which event such specified period and/or conditions shall apply. Notwithstanding the above, if **SBC-ASI/13 State** is no longer required to offer any Service, facility or Interconnection provided hereunder, but **SBC-ASI/13State** or any affiliate thereof offers or will thereafter offer a comparable Service to the public, **SBC-ASI/13State** will permit CLEC, at CLEC's option, to convert the Service being discontinued by **SBC-ASI/13State** to the comparable Service, assuming that all other conversion requirements of the affiliated company are met. The Parties will undertake all reasonable efforts to assure that the conversion is performed in a manner that minimizes service interruption and adverse impacts to CLEC and its End Users.

- 22.2 The Parties acknowledge and agree that the FCC indicated that it may issue an order to address the opinion of the D.C. Court of Appeals in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (the "ASCENT Decision") as discussed in Footnote 768 of the Kansas/Oklahoma 271 Order, FCC 01-29 released January 22, 2001. The parties further acknowledge and agree that the FCC is considering the proper regulatory treatment of Advanced Services provided over wireline facilities in various dockets, including *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33. By executing this Agreement and any Amendments to such Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such proceedings, any other proceedings, or any remands thereof, including its right to seek legal review or a stay pending appeal of such decisions and its rights under this Intervening Law paragraph.

RESALE, ORDERING, PROVISIONING, AND MAINTENANCE

23.0 RESALE

Unless specified otherwise in this Agreement, the Services will be made available pursuant to the terms and conditions, including pricing (less the resale discount where applicable), contained in the applicable tariffs and/or the GATC referenced in SCHEDULE A – PRICING TERMS AND REFERENCES.

- 23.1 At the request of CLEC, and pursuant to the requirements of the Act, the Services that **SBC-ASI/13State** currently provides or hereafter provides at retail to subscribers who are not Telecommunications carriers or ISP(s) will be made available for resale to CLEC by **SBC-ASI/13State** in accordance with the terms and conditions set forth in this Agreement. **SBC-ASI/13State** shall make its Services available for resale to CLEC on terms and conditions that are reasonable and nondiscriminatory. **SBC-ASI/13State** will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Services.
- 23.2 **SBC-ASI/13State** is not required to make Services available for resale at wholesale rates to CLEC for its own use or for the use of any of CLEC's Affiliates and/or subsidiaries or the use of CLEC's parent or any Affiliate and/or subsidiary of CLEC's parent, if any. Further, to the extent CLEC resells Services that require certification on the part of the CLEC's End User, CLEC will ensure that the CLEC's End User has received proper certification and complies with all rules and regulations as established by the Commission. CLEC represents and warrants to **SBC-ASI/13State** that it is authorized to resell the Services and will obtain all regulatory and other certificates, licenses and right-to-use authorizations needed to resell the Services and will provide this documentation to **SBC-ASI/13State** before the Services are ordered by CLEC. Such Services are subject in all respects to the provisions of this Agreement, including, but not limited to, geographical limits, Applicable Laws, and publicity.
- 23.3 Except as otherwise expressly provided herein, for Services included within this Agreement that are offered by **SBC-ASI/13State** to **SBC-ASI/13State's** End Users through tariff(s) and/or the GATC, the rules, regulations and/or terms and conditions associated with **SBC-ASI/13State's** retail tariff(s) and/or the GATC shall apply when the Services are resold by CLEC, with the exception of any resale restrictions; provided, however, any tariff and/or GATC restrictions on further resale by the End User shall continue to apply. Use limitations shall be in parity with Services offered by **SBC-ASI/13State** to its End Users.
- 23.4 CLEC will not use the Services covered by this Agreement to provide Interconnection services, intrastate or interstate access services or to avoid intrastate or interstate access charges to itself, IXCs, wireless carriers, competitive access providers ("CAPs"), or other Telecommunications providers. Provided however, that CLEC may permit its End Users to use resold Services to access IXCs, wireless carriers, CAPs, or other retail Telecommunications providers.
- 23.5 For purposes of determining eligibility to resell volume discount offerings, CLEC

may aggregate multiple End Users' volumes under the relevant retail offering to meet the minimal level of demand.

- 23.6 CLEC may at any time add or delete features to or relocate (subject to the provisions of this Agreement) the Services where available for CLEC's End Users except for grandfathered Services. CLEC may resell grandfathered Services only to End Users that are eligible to receive grandfathered Services from **SBC-ASI/13State**.

23.6.1 In California only, in compliance with the applicable rules and orders of the California Public Utility Commission, **SBC-ASI/13State** will provide CLEC with sixty (60) calendar days notice that such Services will be grandfathered.

23.6.2 In all other states, **SBC-ASI/13State** may grandfather **SBC-ASI/13State's** Services with ninety (90) calendar days notice to CLEC that such Services will be grandfathered.

- 23.7 CLEC will handle all questions from CLEC's End Users relating to the Services being resold.

23.8 Promotions, Pricing, Resale Discount

23.8.1 In Kansas, Oklahoma, and Texas, **SBC-ASI/13State** will offer promotions of ninety (90) calendar days or less to CLEC for resale at the promotional rate without a resale discount. In all other states, promotions of ninety (90) calendar days or less will not be available to the CLEC for resale.

23.8.2 For promotions of more than ninety (90) calendar days, **SBC-ASI/13State** will make the Services available at the resale discount from the promotional rate.

23.8.3 Where applicable, the interim resale discount will be:

State	Interim Resale Discount
Arkansas	14.5%
California	17%
Connecticut	25.4%
Illinois	Average composite rate of 19.47%
Indiana	21.46%
Kansas	21.6%
Michigan	18.15%
Missouri	19.2%
Nevada	18.05%

Ohio	20.29%
Oklahoma	19.8%
Texas	21.6%
Wisconsin	Average composite rate of 19.40%

These interim rates are subject to true up to the extent required by the appropriate state Commission when the Commission adopts a permanent resale discount rate applying to **SBC-ASI/13State's** Services. The resale discount does not apply to the resale of Wholesale DSL Transport Service that **SBC-ASI/13State** sells to ISPs.

23.8.5 Where applicable, and subject to the Conditions for FCC Order Approving SBC/Ameritech Merger, CC Docket No. 98-141, paragraphs 47-49 ("FCC Merger Conditions"), **SBC-ASI/13State** will provide CLEC the promotional resale discount at the rates set forth in the FCC Merger Conditions for the period specified therein on Telecommunications Services that **SBC-ASI/13State** provides at retail to residential End Users who are not Telecommunications carriers or ISP(s) when CLEC resells such Telecommunications Services to residential End Users. Such provision of the promotional resale discount is subject to CLEC's qualification and compliance with the provisions of the FCC Merger Conditions. For purposes of calculating the intervals set forth in the FCC Merger Conditions concerning the time period for offering the promotional resale discount, the Merger Closing Date is October 8, 1999 and the commencement of the Offering Window Date was November 7, 1999.

23.9 **SBC-ASI/13State** will make available to CLEC for resale existing End User Specific Contracts ("ESCs") at the resale discount rate shown below.

23.9.1 In the states of Illinois, Indiana, Kansas, Michigan, Missouri Ohio, Texas, and Wisconsin **SBC-ASI/13State** will make available to CLEC for resale existing CSCs that **SBC-ASI/13State** sells to retail End Users. CLEC will assume in writing the balance of the terms, including volume, term and termination liability in such existing contract with a current retail **SBC-ASI/13State** End User at the time of conversion. An assumption of an existing contract where the terms and conditions are not altered, excepting resale discount, will not constitute grounds for collection of a termination liability. The following resale discount will apply in lieu of the interim resale discount indicated in **Section 23.8.3**, above:

State	Existing Non-Tariffed CSC	Existing Term/Volume Tariffed Contract
Illinois	3.16%	N/A
Indiana	3.39%	N/A

Kansas	5.0%	8.0%
Michigan	3.39%	N/A
Missouri	No Discount	No Discount
Ohio	No Discount	N/A
Texas	5.62%	8.04%
Wisconsin	No Discount	N/A

23.9.2 In California, a CLEC may not assume ESCs. A CLEC may request a ESC that has the same terms and conditions as an **SBC-ASI/13State** ESC to resell to a similarly situated End User. If a CLEC request to resell a ESC to an existing **SBC-ASI/13State** End User, the CLEC shall not assume the ESC. Pursuant to the terms of the ESC, the End User shall be responsible for termination liability for the remainder of the ESC term. The CLEC may resell a new ESC that "mirrors" (e.g. all same terms and conditions including same end date) the old terminated ESC. In the case of reselling a new ESC's to a similarly situated End User, the 17% wholesale discount shall apply.

23.10 Services are subject to resale under this Agreement only where such Services have been deployed by **SBC-ASI/13State** and only where there is existing capacity on **SBC-ASI/13State's** deployed facilities to provide the Services.

24.0 PRE-ORDERING AND ORDERING

24.1 Non-DSL Service Orders. The procedures for placing an order to resell **SBC-ASI/13State's** non-DSL Services are addressed in **Section 30** (Ordering and Terminating Non-DSL Services).

24.2 DSL Service Orders. The procedures for placing an order to resell **SBC-ASI/13State's** DSL Transport Service are addressed in **Section 33** (Ordering and Terminating DSL Transport Service) and **Section 34** (DSL Transport Operational Support Systems).

25.0 INSTALLATION

25.1 **SBC-ASI/13State** will provide CLEC with an installation date for the Service. Subject to **Section 25.3** below, no deviations from the installation date shall occur without the approval of **SBC-ASI/13State**. **SBC-ASI/13State** will provide installation of Service to CLEC within due date intervals that are at least equal to that provided to **SBC-ASI/13State's** End Users..

25.2 Installation of the Service may require the installation of certain equipment and facilities on **SBC-ASI/13State's** side of the demarcation. Consistent with the

availability of such equipment and facilities, installation of the Services shall be established by **SBC-ASI/13State** as provided in **Section 25.1** above.

- 25.3 If installation is delayed due to changes not initiated by **SBC-ASI/13State**, for example, the acts or omissions of CLEC, CLEC's End User or a contractor, or due to any force majeure occurrence, **SBC-ASI/13State** shall have the right to extend installation for a reasonable period of time at least equal to the period of such delay. Any delays in installation must be communicated as soon as practical between the Parties.
- 25.4 Provision of the Service is subject to the availability and operational limitations of the requisite equipment and associated facilities and the connectivity being established to the CLEC's network.
- 25.5 If the Service requires use of Customer Equipment, such Customer Equipment must be compatible with **SBC-ASI/13State's** equipment and facilities and must conform to industry standards and specifications.
- 25.6 CLEC shall ensure the continuing compatibility of Customer Equipment. **SBC-ASI/13State** shall not be responsible for the installation, operation and maintenance of CLEC's Customer Equipment. No combination of Customer Equipment shall: require change in or alteration of the equipment or the Services; cause electrical hazards to **SBC-ASI/13State's** personnel or damage to **SBC-ASI/13State's** equipment; or cause degradation of the Service to persons other than the user of the subject terminal equipment or communications system. Upon notice from **SBC-ASI/13State** that Customer Equipment is causing such hazard, damage, malfunction or degradation of the Service, CLEC shall promptly make such changes as shall be necessary to remove or prevent such hazard, damage, malfunction or degradation of the Service. **SBC-ASI/13State** may disconnect or take off line any Customer Equipment that is degrading Service where CLEC is not responding in a reasonable amount of time to remove or prevent such hazards, damage, and function or degradation of Service.
- 25.7 **SBC-ASI/13State** may make changes in its Services, equipment, operations or procedures, including those related to the Service, where such action is not inconsistent with the proper operation of the Service. If any such change can be reasonably expected to render any of the CLEC equipment incompatible or otherwise materially affect its use or performance, CLEC will be provided written notice in advance of the change.
- 25.8 CLEC shall reimburse **SBC-ASI/13State** for damages to **SBC-ASI/13State** facilities used to provide the Services caused by the negligence or willful act of CLEC or CLEC's End User or resulting from CLEC's or CLEC's End User's improper use of **SBC-ASI/13State** facilities, or due to the malfunction of any facilities or equipment provided by someone other than **SBC-ASI/13State**. Upon

agreement for reimbursement of damages, **SBC-ASI/13State** will cooperate with CLEC in prosecuting a Claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by **SBC-ASI/13State** for damages to the extent of such payment.

- 25.9 **SBC-ASI/13State** will provide notice to CLEC of order completion within intervals that are at least equal to those provided for **SBC-ASI/13State's** End Users.

26.0 MAINTENANCE AND REPAIR

- 26.1 **SBC-ASI/13State** will provide repair, maintenance, testing, and surveillance for all Services in accordance with this Agreement. **SBC-ASI/13State** will provide maintenance and repair for all Services resold by CLEC under this Agreement at levels equal to the maintenance and repair provided by **SBC-ASI/13State** in serving its End Users. Such maintenance requirements will include, but not be limited to, those applicable to testing and network management. **SBC-ASI/13State** reserves the right to temporarily suspend Service during a maintenance window on any equipment or Service. With the exception of any emergency maintenance, or unplanned network outages that are beyond **SBC-ASI/13State** reasonable control, **SBC-ASI/13 State** will provide maintenance services in a manner consistent with similarly situated **SBC-ASI/13State** End Users.

26.2 Maintenance Applications

- 26.2.1 CLEC will utilize the ASI-MAGIC, (Mechanized Access for Graphical Inter-company Communications), trouble management system to enter new trouble tickets and to retrieve and track current status trouble tickets.

26.3 Repair Service Response

SBC-ASI/13State will provide repair service that is at least equal in quality to that provided to **SBC-ASI/13State** End Users. Trouble calls from CLEC will receive response time and priorities that are at least equal to that of **SBC-ASI/13State's** End Users.

26.4 Repair Procedures

- 26.4.1 CLEC will refer repair calls to **SBC-ASI/13State** by telephone or other applicable **SBC-ASI/13State** interface.
- 26.4.2 **SBC-ASI/13State** will make a best effort attempt to notify the CLEC of each missed repair commitment through a status call.

26.4.3 For purposes of this section, a Service is considered restored or a trouble resolved when the quality of the Service is equal to that provided before the outage or the trouble occurred.

26.4.4 It is expressly acknowledged that **SBC-ASI/13State** Services may be purchased for utilization in conjunction with Services provided by other providers (for example, DSL Transport may be purchased for use in conjunction with an ISP's internet access service), and **SBC-ASI/13State** is not responsible for such Services provided by other providers.

26.5 Escalation Procedures

SBC-ASI/13State will provide CLEC with written escalation procedures for maintenance resolution.

26.6 Customer Premises Work

Work done by **SBC-ASI/13State** on CLEC's behalf at the End User's premises and on the End Users side of the point of demarcation or Network Interface Device (NID), shall be performed pursuant to terms and conditions specified by a separate DSL CPE Agreement, as negotiated by the Parties.

26.7 Access.

CLEC will assure that **SBC-ASI/13State** is provided reasonable access to all CLEC or CLEC's End User point of demarcation at reasonable hours for the purpose of installing, inspecting, testing, rearranging, maintaining, repairing or removing the Services

INTERCONNECTION

27.0 GENERAL PROVISIONS

27.1 CLEC may interconnect its network directly or indirectly to facilities and equipment of **SBC-ASI/13State's** network to the extent required by Applicable Law. In such cases, **SBC-ASI/13State** will provide Interconnection to CLEC that is at least equal in quality to that provided by **SBC-ASI/13State** to itself or to any Telecommunications provider to which **SBC-ASI/13State** provides Interconnection.

- 27.2 If either Party changes the methods by which it routes traffic within its network, it will afford the other Party the opportunity to route its traffic in the same manner for purposes of Interconnection.
- 27.3 The CLEC will be responsible for forecasting all Interconnections between the two (2) networks.
- 27.4 **SBC-ASI/13State** will interconnect with CLEC's facilities as follows: In each **SBC-ASI/13State** LATA in which CLEC offers ATM or Frame Relay Service, the Parties will interconnect their network facilities at a minimum of one (1) mutually agreeable ("POI"). The POI will be established as the connection point into the **SBC-ASI/13State** network. Each Party will be responsible for providing necessary equipment and facilities.
- 27.5 Physical Interconnection with CLEC's Facilities

SBC-ASI/13State supports the industry standards for Interconnection. For ATM Service, the interface specification between networks will comply with Broadband Inter-Carrier Interface ("B-ICI"). B-ICI is a standard interface that has been chosen by both ITU-T and ATM Forum for interconnecting two (2) different public ATM networks and to support user Services across multiple public carriers. The B-ICI will support inter-carrier connections based on PVCs. The physical layer of the interface is based on the CCITT-defined Network-to-Network Interface ("NNI"). For Frame Relay Service ("FRS"), the network Interconnection will comply with the specifications from the Frame Relay Forum. The facilities to connect the CLEC's port to **SBC-ASI/13State's** port must be the same speed as the port.

27.5.1 ATM B-ICI

- 27.5.1.1 Interconnection Design One: B-ICI Port and Access Connection. CLEC will purchase transport and Interconnection from **SBC-ASI/13State**. **SBC-ASI/13State** will terminate the Interconnection to the CLEC's termination point. **SBC-ASI/13State** shall designate and provide the Circuit Facility Assignment ("CFA") for the POI. CLEC must have sufficient facilities available for **SBC-ASI/13State's** connections. **SBC-ASI/13State** will not be responsible for building out facilities or extra charges associated with Interconnection for CLEC. Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the POI.
- 27.5.1.2 Interconnection Design Two: B-ICI Port Only Connection. CLEC may interconnect through an B-ICI Port Only connection. CLEC will provide transport into **SBC-ASI/13State** facility. CLEC will either purchase/lease access or use its own access to interconnect with **SBC-ASI/13State**. The

CLEC will be responsible for any cost associated with delivering the access facility to **SBC-ASI/13State's** demarcation point. The POI shall be designated as the Demarcation Point. **SBC-ASI/13State** will have a specified location for entry. **SBC-ASI/13State** will provide the appropriate CFA information to the CLEC. Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the POI

28.0 FRAME RELAY

28.1 Network to Network Interface (NNI) Port and Access .

28.2 Network to Network Interface (NNI) Port Only ordered and provisioned via this Agreement are governed by the terms and conditions of the NNI Port Only Section of the GATC.

TERMS APPLYING TO NON-DSL SERVICES

29.0 PRICES, MOVES AND UPGRADES RELATING TO NON-DSL SERVICES

29.1 Prices

Unless specified otherwise in this Agreement, the Services will be made available pursuant to the terms and conditions, including pricing (less the resale discount where applicable), contained in the applicable tariffs and/or the GATC referenced in SCHEDULE A – PRICING TERMS AND REFERENCES.

29.1.1 The prices do not include any independent company or inter-exchange carrier charges, intra-building network cable, simple inside wire, repair services for such cable and wire or wiring associated with Customer Equipment. The prices also do not include FCC or other mandated surcharges, which will be billed on a monthly basis.

29.1.2 Any additional nonrecurring or special construction charges associated with the new Service will apply.

30.0 ORDERING AND TERMINATING NON-DSL SERVICES

Unless specified otherwise in this Agreement, the Services will be made available pursuant to the terms and conditions, including pricing (less the resale discount where applicable), contained in the applicable tariffs and/or the GATC referenced in SCHEDULE A – PRICING TERMS AND REFERENCES

30.1 Ordering Non-DSL Services

- 30.1.1 ASI-Southwest, ASI-East and ASI-West: CLEC may submit an ASR to the SBC Access Service Center ("ASC"). The ASC will then coordinate the ordering process with **SBC-ASI/13State**.
- 30.1.2 ASI-Midwest: CLEC may submit an ASR to ASI-Midwest's Service Order Writer ("SOW") group. The SOW will then coordinate the ordering process with **SBC-ASI/13-State**.
- 30.1.3 **SBC-ASI/13State** may develop and CLEC may use alternative processes for ordering Non-DSL Services than those stated in Sections 30.1.1 and 30.1.2.
- 30.2 **SBC-ASI/13State** will provide a the CLEC with the ability to perform automated inquiries regarding ordering and provisioning Non-DSL Services. **SBC-ASI/13State** will provide the same provisioning coverage for CLEC's End Users as **SBC-ASI/13State** provides to its own End Users.

TERMS APPLYING TO DSL TRANSPORT SERVICES

31.0 GENERAL PROVISIONS APPLYING TO DSL TRANSPORT SERVICES

Unless specified otherwise in this Agreement, the Services will be made available pursuant to the terms and conditions, including pricing (less the resale discount where applicable), contained in the applicable tariffs and/or the GATC referenced in SCHEDULE A – PRICING TERMS AND REFERENCES.

- 31.1 As indicated herein, **SBC-ASI/13State** will make its DSL Transport Services available for resale to CLEC within its affiliated ILEC's service territory in the state where DSL Transport Service is provided.
- 31.2 DSL Transport Service is available in two different ways: 1) Wholesale DSL Transport to ISPs and 2) Remote LAN DSL Transport. Wholesale DSL Transport is described more fully in Section 6 of the GATC and the Remote LAN DSL Transport is more fully described in Section 7 of the GATC.

32.0 CLEC RESPONSIBILITIES

- 32.1 Backhaul Transport. CLEC acknowledges that it is responsible for obtaining the facilities or Services for the backhaul of data to CLEC's operational data centers.
- 32.2 Customer Premise Equipment (CPE). **SBC-ASI/13State** shall deploy DSLAMs which are compatible with industry standards and shall provide CLEC with

technical data, specifications and other information sufficient to allow CLEC to meet its obligation to select DSL modems, Network Interface Cards, splitters or other CPE compatible with industry standards which is necessary for CLEC's End Users to use DSL Transport Services purchased from **SBC-ASI/13State**.

33.0 ORDERING AND TERMINATING DSL TRANSPORT SERVICE

33.1 Ordering DSL Transport Service.

- 33.1.1 Electronic Order Processing. CLEC may issue a new order to resell **SBC-ASI/13State's** DSL Transport Service through the electronic process described in **Section 35** (DSL Transport Operational Support Systems).
- 33.1.2 In all **SBC-ASI/13State** regions, CLEC will determine whether its End User's loop is "Loop Qualified" per **SBC-ASI/13State** standards (i.e., whether the CLEC's End User's telephone line is able to support and qualifies for DSL Transport Service), and if so, place an order for DSL Transport Service with **SBC-ASI/13State**. **SBC-ASI/13State** will provide a process for receiving orders. CLEC shall be responsible for ensuring the accurate transmittal of (1) information regarding CLEC's End Users to **SBC-ASI/13State** (except for such CLEC End User's Loop Qualified status), and (2) the CLEC internet connectivity address information required to direct the DSL Transport Service to CLEC's internet connection.
- 33.1.3 Once **SBC-ASI/13State** receives an order from CLEC in accordance with the above provisions, **SBC-ASI/13State** shall then be responsible for taking all of the necessary steps to provide such CLEC End User with the DSL Transport Service ordered by CLEC. In the event the DSL Transport Service cannot be made to function within **SBC-ASI/13State's** current operational guidelines, the CLEC will be notified and the order will be cancelled, with no liability to **SBC-ASI/13State**.
- 33.1.4 When CLEC places an order, **SBC-ASI/13State** will specify a Due Date based on force availability or standard interval, as applicable. In the event a Due Date other than that specified is requested by the CLEC End User, CLEC will contact **SBC-ASI/13State** and the Parties will negotiate a Due Date based on that request. **SBC-ASI/13State** will not complete the order prior to the Due Date or later than the Due Date without notification to the CLEC.
- 33.1.5 CLEC and **SBC-ASI/13State** will agree to escalation procedures and contacts for resolving questions and disputes related to ordering and provisioning procedures or to the processing of individual orders, subject ultimately to the dispute resolution provisions of this Agreement. **SBC-**

ASI/13State will notify CLEC of any modifications to these contacts within one (1) week of such modifications.

- 33.1.6 **SBC-ASI/13State** will direct CLEC End Users to contact CLEC if CLEC's End User requests a change in service at the time of installation.
- 33.1.7 **SBC-ASI/13State** will provide CLEC with the same provisioning intervals and procedures for DSL Transport Services that it provides to **SBC-ASI/13State** End Users. **SBC-ASI/13State** will provide non-discriminatory access to the same pre-ordering loop information employed by **SBC-ASI/13State**.

33.2 Terminating DSL Transport Service.

- 33.2.1 **SBC-ASI/13State** will not initiate any CLEC End User-requested disconnection or rearrangement of Services unless directed by CLEC. CLEC will be responsible for sending the appropriate disconnect order to **SBC-ASI/13State** for any DSL Transport Service that it wishes to cancel.
- 33.2.2 Upon receipt of a disconnect order issued by CLEC, **SBC-ASI/13State** will discontinue the provision of the DSL Transport Services to the CLEC's End User pursuant to the instructions in the disconnect order. **SBC-ASI/13State** will cease to charge CLEC for the provision of the particular DSL Transport.
- 33.2.3 In the event that a CLEC's End User instructs **SBC-ASI/13State** not to complete an installation of DSL Transport Service at the CLEC's End User location and **SBC-ASI/13State** is thereby prevented from installing DSL Transport Service, **SBC-ASI/13State** will provide notice to CLEC. CLEC will have ten (10) Business Days from the date of the notice to secure CLEC's End User's permission for **SBC-ASI/13State** to perform work at that location and to notify **SBC-ASI/13State** in writing that it has obtained the necessary permission from CLEC's End User. If CLEC does not notify **SBC-ASI/13State** of such permission within that ten (10) Business Day period, **SBC-ASI/13State** will cancel the order with no liability to **SBC-ASI/13State**. After cancellation, any order for DSL Transport Service for the same CLEC End User location will be treated as a new order.
- 33.2.4 After DSL Transport Service has been installed, if, for reasons beyond the control of **SBC-ASI/13State**, conditions in the loop facilities change causing the DSL Transport Service to become inoperable, **SBC-ASI/13State** will disconnect the inoperable Service with no liability to **SBC-ASI/13State**.

34.0 DSL TRANSPORT OPERATIONAL SUPPORT SYSTEMS ("OSS")

- 34.1 **SBC-ASI/13State** will provide current ordering specifications for DSL Transport Service and all End User data required by **SBC-ASI/13State** from CLEC to provision these Services. **SBC-ASI/13State** ordering and provisioning processes requires the CLEC to order DSL Transport Service and provide internet service details at the same time.
- 34.2 **SBC-ASI/13State** will provide the same hours of provisioning coverage for CLEC End Users as **SBC-ASI/13State** provides to its End Users
- 34.3 The following **SBC-ASI/13State** Electronic Ordering Processes are currently available:
- 34.3.1 Complex Product Service Order System ("CPSOS"). CPSOS provides CLEC wishing to resell **SBC-ASI/13State** DSL Transport Services with real-time loop qualification capability. Once a loop is qualified, CLEC may enter a request for **SBC-ASI/13State** DSL Transport Service through CPSOS. CPSOS also provides CLEC with the capability to manage its outstanding orders and their rudimentary status.
- 34.3.2 Batch Qualification and Batch Ordering. Batch Qualification provides CLEC the ability to qualify bulk quantities of CLEC's End Users' TNs. CLEC must compile and transmit to a designated FTP site a list of End User TNs. Batch Qualification will then process the list and ascertain whether the TNs qualify for **SBC-ASI/13State** DSL Transport Service. Batch Ordering likewise processes a list of TNs and their corresponding Service request parameters through **SBC-ASI/13State** systems.

35.0 FORECASTING

If CLEC desires to stimulate sales of DSL Ttransport Service in a particular area through special promotions or otherwise, CLEC shall provide **SBC-ASI/13State** with at least sixty (60) calendar days prior written notice of this event and shall specify the forecasted volumes by central office. **SBC-ASI/13State** will work with CLEC and use reasonable efforts to accommodate any such increase in anticipated demand, but CLEC recognizes that DSL Ttransport Service is dependent on availability of facilities and other regulatory, business and operating constraints. In the event such activities exhaust existing DSL equipment, **SBC-ASI/13State** is not obligated to add additional equipment.

ANCILLARY FUNCTIONS

36.0 COLLOCATION

To the extent provided by the ASCENT Decision, **SBC-ASI/13State** will provide, on rates, terms and conditions that are just, reasonable, nondiscriminatory and in compliance with all applicable federal laws and regulations, physical collocation of equipment necessary for Interconnection.

37.0 TERMS APPLYING TO SBC-ASI/13STATE OPERATIONAL SUPPORT SYSTEMS

37.1 CLEC Responsibilities.

- 37.1.1 When available, CLEC shall utilize **SBC-ASI/13State's** electronic interfaces, as described throughout this Agreement, only for the purposes of establishing and maintaining resale Services through **SBC-ASI/13State's** Security Guidelines and OSS Policies detailed in this Agreement. Failure to comply with such Security Guidelines and OSS Policies may result in forfeiture of electronic access to OSS functionality.
- 37.1.2 CLEC shall be responsible for and hereby indemnifies **SBC-ASI/13State** against any cost, expense or liability relating to any unauthorized entry or access into, or use or manipulation of **SBC-ASI/13State's** OSS from CLEC systems, workstations or terminals or by CLEC employees or agents or any third party gaining access through information and/or facilities obtained from or utilized by CLEC and shall pay **SBC-ASI/13State** for any and all damages caused by such unauthorized entry.
- 37.1.3 CLEC's access to **SBC-ASI/13State's** OSS will only be utilized to view Customer Proprietary Network Information ("CPNI") of another carrier's End User where CLEC has obtained an authorization for release of CPNI from the End User and has obtained an authorization to become the End User's service provider. The authorization for release of CPNI must comply with all applicable state and federal statutes, rules, and regulations.
- 37.1.4 CLEC is solely responsible for determining whether proper authorization has been obtained and hereby holds **SBC-ASI/13State** harmless from any Loss caused by CLEC's failure to obtain proper CPNI consent from End User.
- 37.1.5 CLEC is responsible for all actions of its employees using any of **SBC-ASI/13State's** OSS systems. CLEC agrees to pay all reasonable costs and expenses, including labor costs, incurred by **SBC-ASI/13State** as a result of

any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by **SBC-ASI/13State** to CLEC.

- 37.1.6 CLEC shall indemnify and hold **SBC-ASI/13State** harmless against any Claim made by a End User of CLEC or other third parties against **SBC-ASI/13State** caused by or related to CLEC's use of any **SBC-ASI/13State** OSS.
- 37.1.7 **SBC-ASI/13State** retains the right to audit all activities by CLEC using any **SBC-ASI/13State** OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed in conjunction with the execution of this Agreement.
- 37.1.8 If CLEC cancels a previously submitted service order before installation, CLEC will pay all costs, fees and expenses incurred or expended by **SBC-ASI/13State** in connection with providing the Service including, but not limited to, any amount paid by **SBC-ASI/13State** to third parties.
- 37.1.9 The Parties recognize that there may be periods when systems are down due to unforeseen difficulties.

37.2 Security Guidelines.

- 37.2.1 Both Parties will maintain accurate records, subject to audit, that monitor user authentication and machine integrity and confidentiality (e.g., password assignment and aging, chronological logs configured, system accounting data, etc.).
- 37.2.2 Both Parties shall maintain accurate and complete records detailing the individual data connections and systems to which they have granted the other Party access or interface privileges. These records will include, but are not limited to, user ID assignment, user request records, system configuration, time limits of user access or system interfaces. These records should be kept until the termination of this Agreement or the termination of the requested access by the identified individual. Either Party may initiate a compliance review of the connection records to verify that only the agreed to connections are in place and that the connection records are accurate.
- 37.2.3 Each Party shall notify the other Party immediately upon termination of employment of an individual user with approved access to the other Party's network.
- 37.2.4 Both Parties shall use an industry standard virus detection software program at all times. The Parties shall immediately advise each other by telephone

upon actual knowledge that a virus or other malicious code has been transmitted to the other Party.

- 37.2.5 All physical access to equipment and Services required to transmit data will be in secured locations. Verification of authorization will be required for access to all such secured locations. A secured location is where walls and doors are constructed and arranged to serve as barriers and to provide uniform protection for all equipment used in the data connections which are made as a result of the user's access to either the CLEC or **SBC-ASI/13State** network. At a minimum, this shall include: access doors equipped with card reader control or an equivalent authentication procedure and/or device, and egress doors which generate a real-time alarm when opened and which are equipped with tamper resistant and panic hardware as required to meet building and safety standards.
- 37.2.6 Both Parties shall maintain accurate and complete records on the card access system or lock and key administration to the rooms housing the equipment utilized to make the connection(s) to the other Party's network. These records will include management of card or key issue, activation or distribution and deactivation.
- 37.2.7 Each Party will monitor its own network relating to any user's access to the Party's networks, processing systems, and applications. This information may be collected, retained, and analyzed to identify potential security risks without notice. This information may include, but is not limited to, trace files, statistics, network addresses, and the actual data or screens accessed or transferred.
- 37.2.8 Each Party shall notify the other Party's security organization immediately upon initial discovery of actual or suspected unauthorized access to, misuse of, or other "at risk" conditions regarding the identified data facilities or information. Each Party shall provide a specified point of contact. If either Party suspects unauthorized or inappropriate access, the Parties shall work together to isolate and resolve the problem.
- 37.2.9 In the event that one Party identifies inconsistencies or lapses in the other Party's adherence to the security provisions described herein, or a discrepancy is found, documented, and delivered to the non-complying Party, a corrective action plan to address the identified vulnerabilities must be provided by the non-complying Party within ten (10) calendar days of the date of the identified inconsistency. The corrective action plan must identify what will be done, the Party accountable/responsible, and the proposed compliance date.

- 37.2.10 Each Party is responsible to notify its employees, contractors and vendors who will have access to the other Party's network, on the proper security responsibilities identified within this Agreement. Adherence to these policies is a requirement for continued access to the other Party's systems, networks or information. Exceptions to the policies must be requested in writing and approved by the other Party's information security organization.

37.3 General OSS Policies.

- 37.3.1 Due to enhancements and on-going development of access to **SBC-ASI/13State's** OSS functions, certain interfaces described in this Agreement may be modified, temporarily unavailable or may be phased out after execution of this Agreement.
- 37.3.2 Each Party's resources are for approved business purposes only.
- 37.3.3 Each Party may exercise at any time its right to inspect, record, and/or remove all information contained in its own systems, and take appropriate action should unauthorized or improper usage be discovered.
- 37.3.4 Individuals will only be given access to resources that they are authorized to receive and which they need to perform their job duties. Users must not attempt to access resources for which they are not authorized.
- 37.3.5 Authorized users must not develop, copy or use any program or code which circumvents or bypasses system security or privilege mechanism or distorts accountability or audit mechanisms.
- 37.3.6 Actual or suspected unauthorized access events must be reported immediately to each Party's security organization or to an alternate contact identified by that Party. Each Party shall provide its respective security contact information to the other.

37.4 User Identification.

- 37.4.1 Access to each Party's corporate resources will be based on identifying and authenticating individual users in order to maintain clear and personal accountability for each user's actions.
- 37.4.2 User identification shall be accomplished by the assignment of a unique, permanent user ID, and each user ID shall have an associated identification number for security purposes.

37.5 User Authentication.

- 37.5.1 Users will usually be authenticated by use of a password. Strong authentication methods (*e.g.* one-time passwords, digital signatures, etc.) may be required in the future.
- 37.5.2 Passwords must not be stored in script files.
- 37.5.3 Passwords must be entered by the user in real time.
- 37.5.4 Personal passwords must not be shared. A user who has shared his password is responsible for any use made of the password.

37.6 Access and Session Control.

- 37.6.1 Destination restrictions will be enforced at remote access facilities used for access to OSS interfaces. These connections must be approved by each Party's corporate security organization.
- 37.6.2 Terminals or other input devices must not be left unattended while they may be used for system access. Upon completion of each work session, terminals or workstations must be properly logged off.
- 37.6.3 On the destination system, users are granted access to specific resources (*e.g.* databases, files, transactions, *etc.*). These permissions will usually be defined for an individual user (or user group) when a user id is approved for access to the system.

37.7 Software and Data Integrity.

- 37.7.1 Each Party shall use a comparable degree of care to protect the other Party's software and data from unauthorized access, additions, changes and deletions as it uses to protect its own similar software and data. This may be accomplished by physical security at the work location and by access control software on the workstation.
- 37.7.2 Suspected software or data shall be scanned for viruses before use on a Party's corporate facilities that can be accessed through the direct connection or dial up access to OSS interfaces.
- 37.7.3 Unauthorized use of copyrighted software is prohibited on each Party's corporate systems that can be access through the direct connection or dial up access to OSS Interfaces.
- 37.7.4 Proprietary software or information (whether electronic or paper) of a Party shall not be given by the other Party to unauthorized individuals. When it is no longer needed, each Party's proprietary software or information shall be returned by the other Party or disposed of securely. Paper copies shall be shredded. Electronic copies shall be overwritten or degaussed.

37.8 Monitoring and Audit.

To deter unauthorized access events, a warning or no trespassing message will be displayed at the point of initial entry (*i.e.*, network entry or applications with direct entry points). Each Party should have several approved versions of this message. Users should expect to see a warning message similar to this one:

"This system is restricted to authorized users for company official business purposes and subject to being monitored at any time. Anyone using this system expressly consents to such monitoring. Confidential information may not be disclosed without authorization. By logging on, each user understands, agrees, and consents that the Company or its authorized designees may inspect, copy, or disclose any electronic communication or other information on this system at any time without further notice."

38.0 ACCESS TO RIGHTS-OF-WAY

Pursuant to Section 251(b)(4) of the Act, to the extent provided by the ASCENT Decision, **SBC-ASI/13State** will provide access to its poles, ducts, conduits, and rights-of-way to CLEC on rates, terms, and conditions that are consistent with Section 224 of the Act. Currently **SBC-ASI/13State** has not deployed any poles, ducts, conduits or rights-of-way.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives. Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

The Company

By: David G. Hammock

Print Name: David G. Hammock

Title: RVP- Carrier/Supplier Mgmt.

Date Signed: 10-11-04

New Edge Networks

By: Robert Y. McMillin

Print Name: Robert Y. McMillin

Title: Senior Director - Interconnection

Date Signed: 10/8/04

SCHEDULE A – PRICING TERMS AND REFERENCES

I. Terms Applying to All Service Pricing

The prices set forth in the tariffs and/or the GATC listed below do not include FCC or other mandated surcharges, applicable taxes, and do not reflect the applicable resale discount, if any. Such surcharges and applicable taxes shall be billed on a monthly basis. Customer will pay **SBC-ASI/13State** or **SBC-ASI/13State's** billing agent for all **SBC-ASI/13State** Services actually installed and billed at the volume level that exists during each current billing cycle. Prices in the applicable tariffs and/or the GATC are subject to change. The CLEC will be advised of any such change.

The resale discount does not apply to the resale of Wholesale DSL Transport Services provided to ISPs.

II. Tariff and/or Generally Available Terms and Conditions for Interstate Advanced Telecommunications Services References

A. Generally Available Rates, Terms and Conditions for Interstate Advanced Telecommunications Services as posted on www.sbc.com.

B. Intrastate Tariffs

Arkansas

Access Service Tariff
Arkansas P.S.C. No. 3

Indiana

I.U.R.C. No. 2

Ohio

PUCO No. 1

California

Schedule Cal. P.U.C.
No. A-T
Schedule Cal. P.U.C.
No. B-T

Kansas

Kansas Intrastate
Tariff No. 3

Oklahoma

Oklahoma Intrastate
Tariff No. 1

Connecticut

D.P.U.C. No. 2

Michigan

No Intrastate Tariff

Texas

General Tariff No. 1
Texas Intrastate Tariff
No. 2

Illinois

ILL.C.C. No. 1

Missouri

Access Services Tariff
General Tariff
Missouri P.S.C. No. 3

Wisconsin

No Intrastate Tariff

Nevada

No Intrastate tariff