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January 30, 2004

RECEIVED

JAN 30 2004

*Records
Public Service Commission*

Dale Hardy Roberts
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65101

Dear Mr. Secretary:

Attached for filing with the Commission, please find the original and three (3) copies of Amendments to Interconnection Agreement by Southwestern Bell Telephone and TCG Kansas City, Inc.

I thank you in advance for your cooperation in bringing this to the attention of the commission.

Very truly yours,

R. Matthew Kohly

R. Matthew Kohly

Attachment

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AMENDMENT NO. _____
to the

JAN 30 2004

INTERCONNECTION AGREEMENT

*Records
Public Service Commission*

by and between

**SOUTHWESTERN BELL TELEPHONE COMPANY, L.P.
d/b/a SBC MISSOURI**

AND

TCG KANSAS CITY

The Interconnection Agreement, approved on September 13, 2001 ("the Agreement"), by and between Southwestern Bell Telephone Company ("SBC") and TCG Kansas City ("TCG-KC"), is hereby amended as follows:

WHEREAS, Sections 10.3 and 11 of the Agreement identifies the notice contacts and the method by which notices are sent; and

WHEREAS, Section 11 of the Agreement further states that either party may change its notice contacts by sending a letter to the other party; and

WHEREAS, TCG-KC and SBC choose now to modify TCG-KC's notice contacts by amendment;

NOW, THEREFORE, the parties agree as follows:

1. Section 10.3 of the Agreement is hereby amended in its entirety to read as follows:

10.3 If TCG-KC fails to pay when due, any and all charges, including any applicable interest, that are billed to TCG-KC for resale services and network elements furnished under this Agreement and are not disputed under Section 8.5, above ("Unpaid Charges"), and any portion of such Unpaid Charges remain unpaid after the due date, SWBT shall provide written notice to TCG-KC's billing department (with a copy to the address for TCG-KC pursuant to Section 11 below) that in order to avoid having service disconnected, TCG-KC must remit all such Unpaid Charges to SWBT. With respect to resale services and network elements, SWBT will notify TCG-KC that such Unpaid Charges remain unpaid fifteen (15) calendar days after the due date and that TCG-KC must remit payment within fourteen (14) calendar days from the date TCG-KC's billing

department receives SWBT's notice, except as otherwise provided in Sections 8.5 through 8.10, governing bona fide billing disputes. No payment made by TCG-KC following notice by SWBT as provided in this Section shall prejudice or otherwise adversely affect TCG-KC's right to dispute the Unpaid Charges, once paid, pursuant to Section 8.4, above. For the purposes of this Section 10.3, SWBT may give notice to TCG-KC's billing department as follows, unless TCG-KC notifies SWBT otherwise:

For SBC Notices Regarding Bills to TCG

US Postal Service or Overnight Delivery:

Tom Rooney, AT&T Carrier Billing Manager
ABM North, Room 335
429 Ridge Road
Dayton, New Jersey 08810
Notice Fax: 732-392-4115
Overnight Package Phone No: 732-392-4045

2. Section 11 of the Agreement is hereby amended in its entirety to read as follows:

11.0 Notices

- 11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

- 11.2 If to TCG-KC:

Billing Notices:

For SBC Notices Involving Billings by TCG

US Postal Service or Overnight Delivery:

TCG Carrier Billing Manager
200 South Laurel Avenue
Middletown, NJ 07748
Notice Fax: 732-368-8930
Overnight Package Phone No: 732-420-6180

**For SBC Notices Regarding Bills to TCG
US Postal Service or Overnight Delivery:**

Tom Rooney
TCG Carrier Billing Manager
ABM North, Room 335
429 Ridge Road
Dayton, New Jersey 08810
Notice Fax: 732-392-4115
Overnight Package Phone No: 732-392-4045

All Notices Other than Billing:

TCG Vice President
c/o Kathleen Whiteaker
TCG District Manager
809 Cobblestone Court
Cedar Hill, Texas 75104
972-291-8867 (Fax); 972-293-8608 (voice contact)

With a copy of all notices to the following:

Miguel (Mickey) Baeza
Senior Attorney
TCG
5501 LBJ Freeway, Suite 346
Dallas, Texas 75240-6202
281-664-9647 (Fax); 972-778-3537 (voice contact)

11.3 If to SWBT:

SBC 13 State Contact
Contract Management
Attn: Notices Manager
311 S. Akard, 9th Floor
Dallas, Texas 75202-5398
214-464-2006 (Fax)

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

3. TCG-KC and SBC have entered into this Amendment because of practical difficulties encountered in implementing changes in notice contacts. Each Party recognizes that the change in notice contacts may be made by letter only, without a contract amendment. Each Party reserves, and neither Party waives, its right at any time to change its notice parties by letter pursuant to Section 11 of the Agreement.
4. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.
5. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT, and such terms are hereby incorporated by reference and the Parties hereby affirm the terms and provisions thereof.
6. This Amendment shall be filed with and subject to approval by the Missouri Public Service Commission. Notwithstanding such approval, the Parties agree to implement this Amendment once it is fully executed by both Parties.
7. In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA decision"); the FCC's Triennial Review Order, adopted on February 20, 2003, released on August 21, 2003, and published in the Federal Register on September 2, 2003, on remand from the USTA decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). In entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 9th day of January, 2004, by SBC, signing by and through its duly authorized representative, and TCG-KC, signing by and through its duly authorized representative.

TCG Kansas City, Inc.

**Southwestern Bell Telephone, L.P.,
d/b/a SBC MISSOURI by
SBC Telecommunications, Inc.,
its authorized agent**

By: Kathleen Whiteaker

By: M. Aulinbauh

Title: District Manager

Title: President - Industry Markets

Name: Kathleen Whiteaker
(Print or Type)

Name: Mike Aulinbauh
(Print or Type)

Date: 12-19-03

Date: JAN 09 2003

INTERCONNECTION AGREEMENT-MISSOURI

between

*Southwestern Bell Telephone Company

and

TCG Kansas City

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BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY
AND
TCG KANSAS CITY

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ATTACHMENTS

Resale

Attachment 1: Resale

Appendix Services/Pricing

Exhibit A: SWBT's Telecommunications Services Available for Resale

Exhibit B: SWBT's Other Services Available for Resale

Appendix Customized Routing-Resale

Appendix DA-Resale

Appendix OS-Resale

Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

Attachment 4: Connectivity Billing-Resale

Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

Appendix Pricing – UNE

Appendix Pricing – UNE: Exhibit 1

*Appendix Pricing – UNE Schedule of Prices

Attachment 7: Ordering and Provisioning – UNE

Exhibit A-Electronic Ordering and Provisioning-UNE

Attachment 8: Maintenance-UNE

Attachment 9: Billing-Other

Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture, Parts A – G

Appendix Inward

Attachment 12: Compensation

Ancillary Functions

Attachment 13: Ancillary Functions

Appendix Physical Collocation

Appendix Virtual Collocation

Appendix Poles, Conduit, ROW

Other Requirements

Attachment 14: Location Routing Number - PNP

Attachment 15: E911

Attachment 16: Network Security and Law Enforcement

Attachment 17: Performance Remedy Plan

Appendix 1 Performance Measures Subject to Tier-1 and Tier-2 Damages Identified as High, Medium and Low

Appendix 2 Measurements Subject to Per Occurrence Damages or Assessment with a Cap and Measurements Subject to Per Measure Damages or Assessment

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Attachment 25: xDSL

Appendix HFPL

Attachment 26: Legitimately Related Provisions

INTERCONNECTION AGREEMENT - Missouri

This Interconnection Agreement - Missouri (Agreement) is between TCG Kansas City (referred to as TCG-KC), a New York partnership, having an office at 1111 Main Street, Suite 300, Kansas City, Missouri, and Southwestern Bell Telephone Company (SWBT), a Missouri corporation, having an office at 1010 Pine Street, St. Louis, Missouri 63101, (collectively the Parties).

*This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), is dated as of August 15, 2001 by and between Southwestern Bell Telephone Company (a Missouri corporation), hereinafter referred to as "SWBT," only to the extent that SWBT provides Telephone Exchange Services as an ILEC in Missouri and, TCG Kansas City, (a New York partnership), hereinafter referred to as "CLEC" or "TCG-KC," and shall apply to the state of Missouri.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SWBT services and for the provision by SWBT of Interconnection, unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

WHEREAS, on February 8, 1996, the Communications Act of 1934, 47 U.S.C. § 151 et seq., was amended by the Telecommunications Act of 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, telecommunications carriers; and

WHEREAS, SWBT is an Incumbent Local Exchange Carrier or has a majority ownership interest in local exchange companies ("ILECs") which are Incumbent Local Exchange Carriers; and

WHEREAS, SWBT for itself and its Affiliates is willing to provide Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale, and additional features, on the terms and subject to the conditions of this Agreement; and

WHEREAS, TCG-KC is a telecommunications carrier and has requested that SWBT negotiate an Agreement with TCG-KC for the provision of Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale, and additional features pursuant to the Act and in conformance with SWBT's duties under the Act; and

WHEREAS, the Parties have arrived at this Agreement through procedures undertaken pursuant to the Act, and acknowledge that its terms and conditions are subject to the Act, including Sections 251 and 252 thereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement TCG-KC and SWBT hereby agree as follows:

1.0 Introduction

- *1.1 This Agreement sets forth the terms, conditions and prices under which SWBT agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) unbundled Network Elements, or combinations of such Network Elements (Combinations), (c) Ancillary Functions and (d) Interconnection to CLEC. This Agreement also sets forth the terms and conditions for the interconnection of CLEC's network to SWBT's network and reciprocal compensation for the transport and termination of telecommunications.
- *1.2 The Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Network Elements, Combinations or Resale services provided by SWBT or to any network components provided by CLEC itself or by any other vendor. Subject to the requirements of this Agreement, CLEC may at any time add, delete, relocate or modify the Resale services, Network Elements or Combinations purchased hereunder.
- *1.3 Except as provided in this Agreement, during the term of this Agreement, SWBT will not discontinue, as to CLEC, any Network Element, Combination, or Ancillary Functions offered to CLEC hereunder. During the term of this Agreement, SWBT will not discontinue any Resale services or features offered to CLEC hereunder except as provided in this Agreement. This Section is not intended to impair SWBT's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Network Elements, Combinations or Ancillary Functions made by SWBT to CLEC as set forth in and during the terms of this Agreement.
- 1.4 SWBT may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed in Section 61 of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, or as required by 47 U.S.C. §224, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier.

2.0 Effective Date, Term, and Termination

- 2.1 [Applies only to Elected Provisions.] Any competitive local exchange carrier that wants to accept this entire Agreement (after the Missouri Public Service Commission has issued an order finding that this agreement satisfies the competitive checklist under 47 U. S. C. Section 271(c) and supporting SWBT's application for in-region intraLATA relief for the State of Missouri), shall notify SWBT in writing. Within 5 business days of such notification, SWBT shall present the competitive local exchange carrier with a signed Interconnection Agreement substantively identical to this Agreement. Within 5 business days of receipt of the SWBT signed Interconnection Agreement, the competitive local exchange carrier shall sign the Interconnection Agreement and file it with this Commission. The signed Interconnection Agreement between SWBT and the competitive local exchange carrier shall become effective by operation of law immediately upon filing with the Commission (the "Effective Date").
- 2.2 The preceding Section 2.1 relates to interconnection agreements that consist of adoptions of the entire M2A. This Agreement is not an adoption of the entire M2A, but is comprised of adopted M2A provisions, as set forth below (the "Elected Provisions"), and of other provisions that were accepted by the Parties outside of the M2A framework, as a result either of negotiation or arbitration (sometimes referred to herein as the "Non-Elected Provisions.") The Effective Date of this Agreement shall be as follows: (i) unless this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252 of the Act, then the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act; (ii) if this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252, then the Effective Date shall be the date upon which the Commission approves the Agreement under the Act, or absent such commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.

M2A Adopted Provisions (referred to herein as "Elected Provisions"):

Attachments 1-10, including all Appendices thereto (except for Appendix Pricing – UNE Schedule of Prices appended to Attachment 6 which has been included in this Agreement by virtue of an arbitration between SWBT and TCG-KC)

Attachment 13, including all Appendices thereto

Attachment 14, including all Appendices thereto

Attachment 15, including all Appendices thereto

Attachments 17, including all Appendices thereto

Attachments 19, including all Appendices thereto

Attachments 22-23, including all Appendices thereto

Attachments 25

Attachment 26

The following Legitimately Related Provisions from the General Terms and Conditions of the M2A: 2.1, 4.1, 4.1.1, 4.1.2, 4.2, 4.2.1, 7.1.1 (legitimately related to Att. 25), 18.1, 18.2, 18.3, 31.1, and 43.1.

Any provisions that are not included in the above list of Elected Provisions are not subject to the General Terms and Conditions listed as "Attachment 26 Legitimately Related Provisions," above (Sections 2.1, 4.1, 4.1.1, 4.1.2, 4.2, 4.2.1, 7.1.1, 18.1, 18.2, 18.3, 31.1 and 43.1)

Note: Appendix Pricing – UNE Schedule of Prices appended to Attachment 6 was excepted from the Elected Provisions because it has been included in this Agreement by virtue of an arbitration between SWBT and TCG-KC. Further, the Parties have agreed that Section 18.1 shall apply equally to Elected Provisions and all other provisions of this Agreement.

3.0 Intervening Law

- 3.1 In the event that any legally binding legislative, regulatory, judicial or other legal action affects any terms of this Agreement, or the ability of TCG-KC or ILEC to perform any terms of this Agreement, TCG-KC or SWBT may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within thirty (30) days after such notice, or if at any time during such 30-day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, the dispute shall be resolved as provided in Section 9, below; provided, however, that pending resolution of the dispute, the affected term(s) shall be immediately invalidated, modified or stayed, consistent with the legally binding legislative, regulatory, judicial or other legal action.
- 3.2 During the pendency of any renegotiation or dispute resolution pursuant to Section 3.1 supra, or prior to any election by either Party pursuant to Section 3.1 supra, the Parties shall continue to perform their obligations in accordance with the terms and conditions in this Agreement, except as otherwise provided in Section 3.1, unless the Commission, the Federal Communications Commission, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.
- 3.3 Intentionally left blank.

- *3.4 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated by SWBT, but instead resulted from determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively, a "Non-Voluntary Arrangement"). SWBT has identified some, but not all, of the Non-Voluntary Arrangements contained in this Agreement, by designating such provisions with asterisks.
- 3.4.1 The Parties acknowledge that the Non-Voluntary Arrangements contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Arrangement. By way of example only, the Parties acknowledge that the PUCO's imposition in Ohio of the Minimum Telephone Service Standards (and all terms and conditions relating thereto) shall not apply in or be "portable to" any state other than Ohio.

4.0 Term of Agreement

- 4.1 [Applies only to Elected Provisions.] This Agreement will become effective as of the Effective Date stated above, and will expire March 6, 2002, unless the Federal Communications Commission (FCC) approves SWBT's application to provide in-region interLATA service in Missouri under 47 U.S.C. § 271 by June 29, 2001, in which event the terms of this Agreement will automatically be extended until March 6, 2005. In the event the FCC approves SWBT's application to provide in-region interLATA service in Missouri under 47 U.S.C. § 271 after June 29, 2001, but prior to March 6, 2002, SWBT shall have the option of extending this Agreement until March 6, 2005. In such event, SWBT will provide notice to the Commission and to CLEC, within five business days of FCC approval, of its agreement to extend this Agreement until March 6, 2005. 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) not later than 180 days prior to the expiration of this Agreement. A Request to Negotiate does not activate the negotiation timeframe set forth in this Agreement, nor does it shorten the life of this Agreement. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said Notice to Negotiate, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement. If the FCC approves SWBT's application to provide in-region interLATA service in Missouri after June 29, 2001 and SWBT provides notice of its agreement under this Section to extend this Agreement until March 6, 2005 CLEC may withdraw its Request to Negotiate.
- 4.1.1 [Applies only to Elected Provisions.] This Agreement will not go into effect until the Missouri Public Service Commission has issued an Order finding that this Agreement satisfies the competitive checklist under 47 U.S.C. Section 271(c) and supporting SWBT's application for in-region interLATA relief for the State of Missouri. SWBT's

offering of this Agreement and all Sections, Attachments and offerings therein are expressly conditioned upon the Missouri Public Service Commission's support for SWBT's application for in-region interLATA relief for the State of Missouri. If the Missouri Public Service Commission does not support SWBT's application for in-region interLATA relief for the State of Missouri, then SWBT's offering of this Agreement and all sections, attachments and offerings therein is immediately withdrawn and this Agreement will not go into effect.

- 4.1.2 [Applies only to Elected Provisions.] Should CLEC opt to incorporate any provision of another interconnection agreement into this Agreement pursuant to Section 252(i) of the Act, such incorporated provision shall expire on the date it would have expired under the interconnection agreement from which it was taken. Should CLEC opt to incorporate any of this Agreement into another interconnection agreement pursuant to Section 252(i) of the Act, this Agreement shall expire on the date provided in Section 4.1 above and shall not control the expiration date of the provisions of the other interconnection agreement.
- 4.2 [Applies only to Elected Provisions.] If either party has served a Notice to Negotiate pursuant to Section 4.1 above then, notwithstanding the expiration of this Agreement in accordance with Section 4.1 above, the terms, conditions, and prices of this Agreement will remain in effect for a maximum of 135 days after expiration of this Agreement for completion of said negotiations and any necessary arbitration. The Parties agree to resolve any impasse by submission of the disputed matters to the Missouri PSC for arbitration. Should the Missouri PSC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 4.2.1 [Applies only to Elected Provisions.] Pursuant to Sections 18.2 and 18.3, SWBT and CLEC agree not to challenge the lawfulness of any provision of this Agreement. In the event that one of the Parties to this Agreement nonetheless challenges the lawfulness of any provision of this Agreement in a judicial, dispute resolution, or regulatory proceeding, then the other Party, at its option, may terminate this Agreement immediately. In such event, the Parties shall have a period not to exceed 135 days in which to negotiate, and 135 additional days to arbitrate any disputes for, a replacement interconnection agreement. However, should a non-party successfully challenge the lawfulness of any provision of this Agreement, SWBT and CLEC agree that, despite such challenge, the terms and conditions of this Agreement will continue to apply and be effective between SWBT and CLEC. Nothing in this Section 4.2.1 is intended to imply that pursuit of resolution of disputes concerning a Party's clarifications or interpretations of the provisions of this Agreement, as provided in Sections 18.2 and 18.3, is a challenge to the lawfulness of this Agreement.
- *4.3 As to the provisions of this Agreement that are not Elected Provisions, this Agreement will become effective as of the Effective Date stated above, and will expire after a three (3) year initial term ("Term"), plus two one year extensions, unless written Notice of Non

Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.

- *4.4 As to the provisions of this Agreement that are not Elected Provisions, the same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the State Commission for arbitration. Should the State Commission decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- *4.5 As to the provisions of this Agreement that are not Elected Provisions, upon termination of this Agreement, TCG-KC's liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by TCG-KC to prevent service interruption, but not to exceed one hundred and thirty-five (135) days. The Network Elements, Combinations, Ancillary Functions and Resale services provided hereunder are vital to TCG-KC and must be continued without interruption. When TCG-KC provides or retains another vendor to provide such comparable Network Elements, Combinations, Ancillary Functions or Resale services, SWBT and TCG-KC agree to co-operate in an orderly and efficient transition to TCG-KC or another vendor. SWBT and TCG-KC further agree to coordinate the orderly transition to TCG-KC or another vendor such that the level and quality of the Network Elements, Combinations, Ancillary Functions and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

5.0 Assignment

- *5.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SWBT may assign its rights and delegate its benefits and delegate its duties and obligations under this Agreement without the consent of CLEC to a 100 per cent owned affiliate of SWBT, provided the performance of any such assignee is guaranteed by the assignor. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.

- *5.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

6.0 Confidentiality and Proprietary Information.

- 6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party (the "Discloser") to the other Party (the "Recipient") and identified by the Discloser as Confidential Information in accordance with this Section 6.
- 6.2 All information which is to be treated as Confidential Information under this Agreement shall:
- (a) if in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and
 - (b) if oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and which is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.

Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information.

- *6.3 In addition, by way of example and not limitation, information regarding orders for Resale Services, Network Elements or Combinations placed by TCG-KC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of TCG-KC's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and Recorded Usage Data as described in Attachments 5 and 10 concerning Recorded Usage Data, whether disclosed by TCG-KC to SWBT or otherwise acquired by SWBT in the course of the performance of this Agreement, will be deemed Confidential Information of TCG-KC for all purposes under this Agreement.
- 6.4 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be

agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.

- 6.5 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.6 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.7 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 6.8 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.9 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.

- 6.10 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.11 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

7.0 Liability, Indemnification, Intellectual Property and Insurance

7.1 Limitation of Liabilities

- 7.1.1 [Applies only to Elected Provisions.] Except as specifically provided in Attachment 25 DSL-MO, the Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in Sections 7.3.1 and 7.3.6, following, and for willful or intentional misconduct (including gross negligence), will not exceed the total of any amounts due and owing to CLEC pursuant to Section 46 (Performance Criteria) and the Attachment referenced in that Section, plus the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.
- 7.1.2 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices or attachments, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SWBT or TCG-KC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed. "Loss" is defined as 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).
- 7.1.3 Except as otherwise provided below or in specific appendices or attachments, in the case of any loss alleged or claimed by a third party arising under the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this section

shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

- 7.1.4 SWBT shall not be liable to TCG-KC for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after SWBT has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from TCG-KC until service is restored.
- 7.1.5 In the event TCG-KC provides E911 Service to SWBT, TCG-KC shall not be liable to SWBT, its end Users or its E911 calling parties or any other parties or persons for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after TCG-KC has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from SWBT until service is restored.

7.2 No Consequential Damages

- 7.2.1 EXCEPT AS OTHERWISE PROVIDED IN ATTACHMENT 17 – PERFORMANCE MEASURES, NEITHER TCG-KC NOR SWBT WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SWBT'S OR TCG-KC'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SWBT OR TCG-KC'S NEGLIGENT ACT OR

OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 Obligation to Indemnify

7.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnitee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors.

*7.3.1.1 In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional or willful misconduct or breach of applicable law of the other (Indemnified) Party.

7.3.2 Intellectual Property

*7.3.2.1 CLEC acknowledges that its right under this Agreement to interconnect with SWBT's Missouri network and to unbundle and/or combine SWBT's network elements (including combining with CLEC's network elements) 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.

*7.3.3 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), *In the Matter of Petition of MCI for Declaratory Ruling*. Absent any stay, reconsideration or appeal, such Order will become effective thirty (30) days following the future publication of such Order in the Federal Register. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments

with respect to such decision and any remand thereof, including its right to seek legal review or a stay pending appeal of such decision.

- *7.3.3.1 When the Order referenced in Section 7.3.3 (or any reconsideration or appeal therefrom) is effective, SWBT agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each unbundled network element necessary for CLEC to use such unbundled network element in the same manner as SWBT.
- *7.3.3.2 SWBT shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any unbundled network element in a different manner than used by SWBT.
- *7.3.3.3 When the Order referenced in Section 7.3.3 (or any reconsideration or appeal therefrom) is effective, to the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SWBT shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SWBT under the vendor contract and the terms of the contract (excluding cost terms). SWBT shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.
- *7.3.4 SWBT hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any third party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such interconnection or unbundling and/or combining of network elements (including combining with CLEC's network elements) in SWBT's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights SWBT agrees in Section 7.3.3.1 to use its best efforts to obtain.
- *7.3.5 SWBT does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Damages for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's interconnection with SWBT's network and unbundling and/or combining SWBT's network elements (including combining with CLEC's network elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with unbundled network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SWBT agrees in Section 7.3.3.1 to use its best efforts to obtain.

- *7.3.6 TCG-KC hereby agrees to release, indemnify and hold SWBT harmless from and against all Damages arising out of, caused by, or relating to any Claim that TCG-KC's interconnection with SWBT's network, or TCG-KC's use of SWBT's network elements, or unbundling and/or combining of SWBT's network elements (including combining with TCG-KC's network elements) or TCG-KC's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any third party Intellectual Property rights or constitutes a breach of contract rights of third parties.
- 7.3.7 Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims of third parties that may arise in the performance of this Agreement.
- 7.3.8 All costs associated with the extension of Intellectual Property rights to TCG-KC pursuant to Section 7.3.3.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including SWBT.
- 7.4 Obligation to Defend; Notice; Cooperation
- 7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also will be entitled

to employ separate counsel for such defense at such Indemnatee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnatee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

7.5 OSHA Statement

- 7.5.1 TCG-KC, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to TCG-KC's activities concerning Collocated Space, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result solely of TCG-KC's failure to comply with any of the foregoing. SWBT, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold TCG-KC harmless for any judgments, citations, fines or other penalties which are assessed against TCG-KC as a result solely of SWBT's failure to comply with any of the foregoing.

7.6 OSS

- 7.6.1 TCG-KC shall be responsible for and indemnifies SWBT against any cost, expense or liability relating to any unauthorized entry or access into, or improper use or manipulation of SWBT's OSS by TCG-KC employees or persons using authorization granted to that person by TCG-KC to access SWBT's OSS and shall pay SWBT for any and all damages caused by such unauthorized entry, improper use or manipulation of SWBT's OSS.

7.7 Insurance

- 7.7.1 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:
- 7.7.1.1 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.
- 7.7.1.2 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.

- 7.7.1.3 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.
- 7.7.2 Each Party shall require subcontractors providing services under this Agreement to maintain reasonable types and amounts of insurance coverage. Each Party shall inform the other Party of those requirements upon request. If either Party believes the other Party's required amounts are commercially inadequate, either Party may submit the dispute to Dispute Resolution under Section 9 of this Agreement.
- 7.7.3 The Parties agree that companies affording the insurance coverage required under Section 7.7.1 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.
- 7.7.4 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.
- 7.7.5 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:
 - 7.7.5.1 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
 - 7.7.5.2 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
 - 7.7.5.3 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.
- 7.7.6 This Section 7.7 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

8.0 Payment of Rates and Charges; Deposits

- 8.1 Except as otherwise specifically provided elsewhere in this Agreement, including but not limited to Section 8.5, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of the date of the invoice or within twenty (20) days of receipt of an invoice, whichever is later; provided, the paying Party shall advise the billing Party via fax or e-mail in the event the bill is received 10 or more days after the bill date. For the purposes of this Section 8.1, each Parties' respective billing contact information shall be as follows unless otherwise designated by the Party:

If to SWBT	If to TCG-KC
Marcia Bleeker Account Manager 370 3rd St. Room 401 San Francisco, CA 94107-1279 (925)867-5629	Carrier Billing Management Care
(925)867-0121	(770) 750-0288
SMTP:mgbleek@msg.pacbell.com	cbmcc@att.com

- 8.1.1 If the payment due date is a Sunday or is a Monday that has been designated a bank holiday by the Chase Manhattan Bank of New York (or such other bank as the Parties agree), payment will be made the next business day. If the payment due date is a Saturday or is on a Tuesday, Wednesday, Thursday or Friday that has been designated a bank holiday by the Chase Manhattan Bank of New York (or such other bank as the Parties agree), payment will be made on the preceding business day.
- 8.2 If either Party fails to remit payment for any charges for services by the applicable due date, or if a payment or any portion of a payment is received by the billing Party from the paying Party after the applicable due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the billing Party as of the due date (individually and collectively, "Past Due"), then interest shall be assessed as follows in Sections 8.2.1 and 8.2.2, as applicable. No other late payment fee or charge applies to overdue amounts.
- 8.2.1 If any charge incurred under this Agreement is past due (including prior months' unpaid interest charges), such unpaid amounts shall bear interest from the applicable due date until paid. The interest rate applied to Past Due unpaid amounts billed out of any billing system other than the SWBT Customer Records Information System (CRIS) shall be the lesser of (i) the rate used to compute the Late Payment Charge contained in the SWBT intrastate Texas access services Commission-approved tariff and (ii) the highest rate of

interest that may be charged under applicable law, compounded daily from the applicable due date to and including the date that the payment is actually made and available.

- 8.2.2 If any charge incurred under this Agreement that is billed out of SWBT's CRIS is past due (including prior months' unpaid interest charges), such unpaid amounts shall bear interest from the applicable due date until paid. The interest rate applied to SWBT CRIS-billed Past Due unpaid amounts shall be the lesser of (i) the rate used to compute the Late Payment Charge contained in the SWBT Texas intrastate retail Commission-approved tariff governing Late Payment Charges to SWBT's retail end users that are business end users and (ii) the highest rate of interest that may be charged under applicable law, compounded daily from the applicable due date to and including the date that the payment is actually made and available.
- 8.3 Each Party shall make all Payments in U.S. Dollars to the other party via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by Party receiving the payment. At least thirty (30) days prior to the first transmission of billing data and information for payment, SWBT will provide the name and address of its bank, its account and routing number and to whom billing payments should be made payable. If such banking information changes, each Party will provide the other Party at least sixty (60) days written notice of the change and such notice will include the new banking information. TCG-KC and SWBT shall abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer shall be received by the billing Party no later than the applicable due date of each bill or interest will apply as provided in Section 8.2.1 above. The Party receiving payment shall not be liable for any delays in receipt of funds or errors in entries caused by the paying Party or third parties, including the paying Party's financial institution. The paying Party is responsible for its own banking fees. Each Party will provide the other Party with a contact person for the handling of billing payment questions or problems.
- 8.3.1 SWBT and TCG-KC shall provide each other with remittance advices, providing detailed account information for proper application of the payment made by the paying Party. The remittance advice shall be transmitted electronically by 1:00 A.M. Eastern Time on the date the payment is effective, via an 820 EDI process, or, if the Parties agree, through the ACH network. Such process shall be utilized by the Parties beginning no later than three (3) months after the Effective Date of this Agreement, unless otherwise agreed between the Parties.
- 8.3.2 In the event TCG-KC receives multiple and/or other bills from SWBT which are payable on the same date, TCG-KC may remit one payment for the sum of all such bills payable to SWBT's bank account designated pursuant to Section 8.3 and TCG-KC will provide SWBT with a payment advice pursuant to Section 8.3.1.

8.4 Billing Disputes Related to Paid Amounts

8.4.1 In order for a Billed Party to dispute all or a portion of amounts it has paid, it must:

8.4.1.1 within eleven months of TCG-KC's receipt of the bill in question, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the total amount disputed and the specific details and reasons for disputing each item (including, without limitation, and as applicable, the date of the bill in question, CBA/BAN number of the bill, the telephone number, customer code, circuit ID number or trunk number, and the USOC information questioned); and

8.4.1.2 follow the dispute resolution procedures set forth in Section 9, below.

8.4.2 If a Billed Party brings a dispute pursuant to this Section 8.4, and any portion of the dispute is resolved, at the conclusion of the applicable dispute resolution process pursuant to Section 9, in favor of the Billed Party, the Billing Party shall pay or credit the account of the Billed Party (at the Billed Party's discretion), no later than the second bill date after the resolution of the dispute, for that portion of the paid Disputed Amounts resolved in favor of the Billed Party, including interest. Such interest shall be computed under Section 8.2 as if such portion of the paid Disputed Amount became past due from the Billing Party on the same date the Disputed Amount was paid by the Billed Party.

8.5 Billing Disputes Related to Unpaid Disputed Amounts; Escrow Requirements.

8.5.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Billed Party") shall, five (5) business days prior to the applicable due date, advise the Billing Party in writing of the amounts it disputes ("Disputed Amounts") and within ten (10) business days after the applicable due date give the Billing Party written notice of the amount disputed, specific details and reasons for disputing each item (including, without limitation, as applicable, the date of the bill in question, CBA/BAN number of the bill, the telephone number, customer code, circuit ID number or trunk number, the USOC information questioned), and pay to SWBT all undisputed unpaid charges by their applicable due date. All disputes must be in good faith and have a reasonable basis.

8.5.2 [Intentionally left blank]

8.5.3 The Billed Party shall pay (i) when due, all undisputed amounts to the Billing Party, and (ii) within thirty (30) days after its written notice of dispute, except as otherwise provided in Section 8.7 below, 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:

- 8.5.3.1 The financial institution proposed as the third party escrow agent must be located within the continental United States;
- 8.5.3.2 The financial institution proposed as the third party escrow agent may not be an affiliate of either Party; and
- 8.5.3.3 The financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) credit transactions transfers.
- 8.5.3.4 In addition to the foregoing requirements for the third party escrow agent, the disputing Party and the financial institution proposed as the third party escrow agent must agree that the escrow account will meet all of the following criteria:
 - 8.5.3.5 The escrow account must be an interest bearing account;
 - 8.5.3.6 All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
 - 8.5.3.7 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;
 - 8.5.3.8 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
 - 8.5.3.9 Disbursements from the escrow account shall be limited to those:
 - 8.5.3.9.1 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
 - 8.5.3.9.2 made in accordance with the final, non-appealable order or award of an arbitrator appointed pursuant to the provisions of Sections 9.5.1 or 9.6.1; or
 - 8.5.3.9.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter an arbitrator's award pursuant to Section 9.6.1.
- 8.5.4 Disputed Amounts in escrow shall be subject to interest as set forth in Sections 8.2.1 and 8.2.2, as applicable.
- 8.6 [Intentionally left blank]

- 8.7 The Billed Party shall not be required to place Disputed Amounts in escrow, as required by Section 8.5, above, if: (i) the Billed Party does not have a proven history of late payments and has established a minimum of twelve consecutive (12) months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing dispute); and (ii) the Billed Party has not filed more than three previous billing disputes within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute, which previous disputes were resolved in Billing Party's favor or, if the bill containing the disputed charges is not the first bill for a particular service to the Billed Party, the Billed Party's dispute does not involve 50% or more of the total amount of the previous bill out of the same billing system.
- 8.8 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 9.
- 8.9 If the Billed Party disputes in accordance with Section 8.5, any charges and any portion of the dispute is resolved in favor of such Billed Party, the Parties shall cooperate to ensure that all of the following actions are taken:
- 8.9.1 no later than the second bill date after the resolution of the dispute, the Billing Party shall credit the invoice of the Billed Party for that portion of the Disputed Amounts resolved in favor of the Billed Party, including a credit for any interest assessed or applied with respect to such portion of the Disputed Amounts;
- 8.9.2 within fifteen (15) calendar days after resolution of the dispute, the portion of the escrowed Disputed Amounts, if any, resolved in favor of the Billed Party shall be released to the Billed Party, together with any accrued interest thereon, and any portion of the Disputed Amounts not in escrow and resolved in favor of the Billed Party shall be paid to Billed Party, together with any interest assessed or applied with respect thereto; and
- 8.9.3 within fifteen (15) calendar days after resolution of the dispute, any portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon (and if the accrued interest does not equal any interest that would have been assessed pursuant to Section 8.2.1 had the Disputed Amounts remained undisputed and unpaid during the period of the Dispute, the Billed Party shall remit payment of the difference to the Billing Party within this same time period) and, as applicable, any portion of the Disputed Amounts not in escrow and resolved in favor of the Billing Party shall be paid to Billing Party, together with any interest assessed or applied with respect thereto.
- 8.10 Failure by the Billed Party to knowingly take all necessary actions to effect a release of escrowed Disputed Amounts determined at the conclusion of the applicable dispute resolution process to be owed to the Billing Party or to pay any charges determined to be

owed to the Billing Party within the time specified in Section 8.9 shall be grounds for termination of this Agreement as specified in Section 10.1, following.

8.11 Deposits

- 8.11.1 The deposit requirements set forth in this Section 8 apply to SWBT's providing the Resale Services and Network Elements (exclusive of interconnection facilities) furnished under this Agreement. SWBT may, in order to safeguard its interests, require that TCG-KC, if it has a proven history of late payments or has not established a minimum of twelve consecutive months good credit history with SWBT, make a reasonable deposit to be held by SWBT as a guarantee of the payment of charges. For purposes of this provision, a Party shall not be deemed to have "a proven history of late payments" or "not established credit" based in whole or in part on the failure to pay amounts which such Party has properly disputed in good faith in accordance with all applicable provisions of Sections 8.5 through 8.10.
- 8.11.2 If TCG-KC is required in accordance with this Section 8.11 to make a deposit payment and SWBT furnishes to TCG-KC both resale services and network elements under this Agreement, TCG-KC shall make two separate deposits where applicable, each calculated separately as set forth below.
- 8.11.3 Unless TCG-KC is not required to make a deposit payment as described in Section 8.11.1 above, TCG-KC shall remit an initial cash deposit within thirty (30) days after written request by SWBT. The deposit required by the previous sentence, if any, shall be determined as follows: (i) if, immediately prior to the Effective Date, TCG-KC was not operating as a local service provider in Texas, the initial deposit shall be in the amount of \$17,000; or (ii) if, immediately prior to the Effective Date, TCG-KC was operating as a local service provider in Texas, the deposit shall be in the amount calculated using the method set forth in Section 8.11.7 of this Agreement. This cash deposit will be held by SWBT as a guarantee of payment of charges billed to TCG-KC. If TCG-KC is not required to make a deposit payment as set forth in Section 8.11.1 above, SWBT shall not require an initial deposit requirement; provided, however, that the terms and conditions set forth in Section 8.11.1 and Sections 8.11.4 through Section 8.11.10 of this Agreement shall continue to apply for the term of this Agreement and any extension(s) hereof. In determining whether TCG-KC has established the minimum twelve (12) months good credit history, TCG-KC's payment record for the most recent twelve (12) months occurring within the twenty-four (24) month period immediately prior to the Effective Date shall be considered.
- 8.11.4 So long as TCG-KC maintains timely compliance with its payment obligations, SWBT will not increase any deposit amount required. If TCG-KC fails to maintain timely compliance with its payment obligations, SWBT reserves the right to require additional

deposit(s) determined in accordance with Section 8.11.5 and Section 8.11.6 through Section 8.11.10 of this Agreement.

- 8.11.5 If during the first six (6) months of operations under this Agreement, TCG-KC has been sent one valid delinquency notification letter (a letter notifying TCG-KC of charges that remain unpaid more than fifteen (15) days past their due date (30 days from the date of the invoice or 20 days from TCG-KC's receipt, whichever due date applies to the bill in question, pursuant to, Section 8.1, above) by SWBT, where at least a portion of the charges addressed by the delinquency notification letter are not the subject of a dispute under Section 8.5, the deposit amount for the service(s) subject to such delinquency notification letter shall be re-evaluated based upon TCG-KC's actual billing totals and shall be increased if TCG-KC's actual billing average for a two month period exceeds the deposit amount held.
- 8.11.6 Throughout the term of this Agreement and any extension(s) thereof, any time TCG-KC has been sent two (2) delinquency notification letters (letters notifying TCG-KC of charges that remain unpaid more than fifteen (15) days past their due date) by SWBT within the immediately preceding twelve (12) months, where at least a portion of the charges addressed by each delinquency notification letter are not the subject of a dispute under Section 8.5, the deposit amount for the service subject to such delinquency notification letters shall be re-evaluated based upon TCG-KC's actual billing totals and shall be increased if TCG-KC's actual billing average for a two month period exceeds the deposit amount held.
- 8.11.7 Whenever TCG-KC's deposit is re-evaluated as specified in Section 8.11.5 or Section 8.11.6, above, such deposit shall be calculated in an amount equal to the average billing to TCG-KC for Resale service and/or unbundled elements, as applicable, for a two month period. With respect to TCG-KC, the most recent three (3) months billing on all of TCG-KC's BANs or CBAS numbers, as applicable, for resale services or network elements shall be used to calculate TCG-KC's monthly average, which monthly average shall be multiplied by two (2) to arrive at the amount of deposit permitted by Sections 8.11.5 and 8.11.6.
- 8.11.8 Whenever a deposit is re-evaluated as specified in Section 8.11.5 and Section 8.11.6, above, TCG-KC shall remit the additional deposit amount to SWBT within thirty (30) calendar days of receipt of written notification SWBT requiring such deposit.
- 8.11.9 The deposit requirements of this Section 8.11 may be satisfied in whole or in part with an irrevocable bank letter of credit reasonably acceptable to SWBT. No interest shall be paid by SWBT for any portion of the deposit requirement satisfied by an irrevocable bank letter of credit.

- 8.11.10 The fact that SWBT holds a cash deposit or irrevocable bank letter of credit does not relieve TCG-KC from timely compliance with its payment obligations under this Agreement.
- 8.11.11 Any cash deposit held by SWBT shall be credited to TCG-KC's account during the month following the expiration of twelve (12) months after the cash deposit was remitted, so long as TCG-KC has not been sent more than one delinquency notification letter (as defined in Section 8.11.5) during the most recent twelve (12) months, in which case such cash deposit will be credited during the first rolling twelve (12) month period in which TCG-KC has been sent less than two delinquency notifications. For the purposes of this Section 8.11.11, interest will be applied from the date paid and calculated as defined in Sections 8.2.1 and 8.2.2 to CRIS and non-CRIS billed charges, as applicable, above, and shall be credited to TCG-KC's account on an annual basis.
- 8.11.12 Any cash deposit shall be held by SWBT as a guarantee of payment of charges billed to TCG-KC, provided, however, SWBT may exercise its right to credit any cash deposit to TCG-KC's account upon the occurrence of any one of the following events:
- 8.11.12.1 when SWBT sends TCG-KC the second valid delinquency notification under this Agreement during the most recent twelve (12) months (provided that a delinquency notification shall be deemed valid if no dispute has been filed under Section 8.5 as to any amount covered by the delinquency notice); or
 - 8.11.12.2 when SWBT suspends TCG-KC's ability to process orders in accordance with Section 10.1.2; or
 - 8.11.12.3 when TCG-KC files for protection under the bankruptcy laws; or
 - 8.11.12.4 when an involuntary petition in bankruptcy is filed against TCG-KC and is not dismissed within sixty (60) days; or
 - 8.11.12.5 when this Agreement expires or terminates (provided, upon expiration or termination of this Agreement, any deposit monies not applied under this Agreement against charges payable by TCG-KC shall be refunded to TCG-KC by SWBT);
 - 8.11.12.6 during the month following the expiration of twelve (12) months after that cash deposit was remitted, SWBT shall credit any cash deposit to TCG-KC's account so long as SWBT has not sent to TCG-KC more than one delinquency notification letter under this Agreement during the most recent twelve (12) months; or
 - 8.11.12.7 upon mutual agreement of the Parties.

- 8.11.13 For the purposes of this Section 8.11.13, interest will be calculated as specified in Section 8.2 and shall be credited to TCG-KC's account at the time that the cash deposit is credited to TCG-KC's account.
- 8.12 Assuming that the previous payment and credit history of a Party (a "Requesting Party") justifies doing so, upon request the other Party (the "Acknowledging Party") will issue a written acknowledgement that the Requesting Party satisfies the condition that the Requesting Party does not have a proven history of late payments and that it has established a minimum of twelve consecutive months good credit history with the Acknowledging Party. Such an acknowledgement, whenever given, shall not be barred by Section 33, below, and shall be enforceable pursuant to its own terms. Such an acknowledgement shall not be required in order for a Party to meet the conditions necessary to avoid imposition of a deposit requirement under this Agreement, assuming it otherwise meets the conditions.

9.0 Dispute Resolution

9.1 Finality of Disputes

- 9.1.1 Except as otherwise specifically provided in this Agreement (for example, in Section 8.5.1, above), no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.
- 9.1.2 Pending the resolution of any dispute raised in accordance with Section 9 of this Agreement, whether by settlement or by final and nonappealable arbitration award, ruling, order or judgment, each Party shall continue to perform all of its obligations under this Agreement, and shall not, based upon an act or omission that is the subject of the dispute that is pending resolution, discontinue or cease to provide all or any portion of obligations pursuant to this Agreement, unless otherwise directed by the other Party.

9.2 Alternative to Litigation

- 9.2.1 Dispute resolution under the procedures provided in this Section 9 shall be the preferred, but not the exclusive, remedy for all disputes between SWBT and TCG-KC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure. However, except for an 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, no action or complaint

may be filed in the Commission or a court, agency or regulatory authority of competent jurisdiction before the Informal Resolution of Disputes procedures set forth in Section 9.3 below have been followed, in good faith, by the Party commencing such action or complaint.

9.3 Informal Resolution of Disputes

9.3.1 Upon receipt by one Party of written notice of a dispute, including billing disputes, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative informal dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

9.3.2 If the Parties are unable to resolve a dispute through the informal procedures described above, then either Party may invoke the Formal Resolution of Disputes or the Parties may agree to invoke Arbitration processes set forth below. Unless the Parties otherwise agree, Formal Resolution of Disputes processes, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) days after the date of the letter initiating informal dispute resolution under this Section 9.3.

9.3.3 Either Party may notify the other Party in writing at any time after the 60th day after the date of the letter initiating informal dispute resolution under this Section 9.3 that it considers the matter to be at impasse. Such notice shall be provided by any acceptable means under Section 11, below, other than via facsimile. If the other Party does not pursue additional dispute resolution measures pursuant to this Section 9 within 10 business days of the date of the notice letter, the notifying Party may exercise its rights to disconnection and termination in accordance with the processes set forth in Section 10.

9.4 If a bill closure process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of this Section.

9.5 Formal Resolution of Disputes

9.5.1 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 billing disputes and 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 applicable commission. Also, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 9.6.

9.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

9.5.3 Claims Not Subject to Commercial Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to commercial arbitration as provided in Section 9.6 below and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

9.5.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

9.5.3.2 Actions to compel compliance with the Dispute Resolution process.

9.5.3.3 All claims arising under federal or state statute(s), including antitrust claims

9.6 Commercial Arbitration

9.6.1 When both Parties agree to binding commercial arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association for commercial disputes or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will be Dallas, Texas, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within 60 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 30 days after the close of hearings. The arbitrator has 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. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

10.0 Non-payment and Procedures for Disconnection

10.1 Either Party may terminate this Agreement in the event of a Party's refusal or failure to pay all or any portion of any amount required to be paid to the other Party as and when due and payable as provided except that:

- (a) A Party may only terminate this Agreement and/or disconnect interconnection with the other Party's network upon obtaining an order from a governmental, administrative, or regulatory body or a court of competent jurisdiction approving such termination and/or disconnection;
- (b) Notwithstanding Section 10.1 (a), above, in the event of TCG-KC's refusal or failure to pay all or any portion of any amount required to be paid for Resale and/or UNE services as and when due and payable as provided in this Agreement, SWBT may cease providing and may disconnect such services only in accordance with the processes set forth below.

10.1.1 Where TCG-KC has refused or failed to pay all or any portion of any amount required to be paid to SWBT as and when due and payable and has not presented a dispute under Section 8.5 of this Agreement, the applicable procedures for notice and disconnection as set forth in Sections 10.3 through 10.11 below shall apply.

10.1.2 Where TCG-KC has refused or failed to pay all or any portion of any amount required to be paid to SWBT as and when due and payable and has presented a dispute as to those amounts (the "Previously Disputed Amounts") under Section 8.5 of this Agreement, but has not requested Formal Dispute Resolution under Section 9.5, above, within the later of 90 days of the date of the letter initiating informal dispute resolution under Section 9.3.1 or within 10 business days of receipt of notice under Section 9.3.3, then SWBT shall notify TCG-KC and the Commission that unless the Previously Disputed Amounts are paid within sixteen (16) calendar days, the resale services and/or network elements furnished to TCG-KC under this Agreement for which the Previously Disputed Amounts are outstanding (i.e. delinquent) shall be disconnected. This notice shall further specify that any of TCG-KC's Resale end users that will be affected by such disconnection shall be caused to be defaulted to SWBT local service. On the same day it sends the notice letter required by this Section 10.1.2, SWBT will suspend acceptance of any order (other than a disconnect order) from TCG-KC for any resale service or network element that could be furnished under this Agreement. Furthermore, the provisions of Sections 10.5 through 10.11 shall apply, but Sections containing specific time periods relative to the obligations shall be modified as follows:

- (i) In Section 10.5, the phrase "forty (40) calendar days past the due date of the undisputed Unpaid Charges" shall be modified to read "thirty-two (32) days past the expiration of the 90-day period;"

(ii) In Section 10.6, the phrase “forty-five (45) calendar days past the due date of such Unpaid Charges” shall be modified to read “thirty-seven (37) days past the expiration of the 90-day period;”

(iii) In Section 10.7, the parenthetical “(fifty (50) calendar days past the due date for such undisputed Unpaid Charges)” shall be deleted;

(iv) In Section 10.8, the parenthetical “(eighty (80) calendar days past the due date for TCG-KC’s undisputed Unpaid Charges)” shall be deleted.

(v) Further, Sections 10.5 through 10.11 shall be modified to read “Previously Disputed Amounts” where the phrase “Unpaid Charges” is found.

10.1.3 Where TCG-KC has refused or failed to pay all or any portion of any amount required to be paid to SWBT as and when due and payable following the conclusion of any Formal Dispute Resolution process initiated by a Party or employed by the Parties pursuant to Sections 9.5 or 9.6 above, then, no sooner than fifteen (15) days after the Formal Dispute Resolution process has concluded, SWBT shall notify TCG-KC and the Commission that unless the amounts required to be paid to SWBT following the conclusion of the Formal Dispute Resolution process (“FDR Amounts”) are paid within sixteen (16) calendar days, the resale services and/or network elements furnished to TCG-KC under this Agreement for which the FDR Amounts are outstanding (i.e. delinquent) shall be disconnected. This notice shall further specify that any of TCG-KC’s Resale end users that will be affected by such disconnection shall be caused to be defaulted to SWBT local service. On the same day it sends the notice letter required by this Section 10.1.3, SWBT will suspend acceptance of any order (other than a disconnect order) from TCG-KC for any resale service or network element that could be furnished under this Agreement. For purposes of this Section 10.1.3, “conclusion” of the Formal Dispute Resolution process initiated by a Party or employed by the Parties pursuant to Sections 9.5 or 9.6 above shall occur on the day any ruling, order or award in that process becomes final and nonappealable. Furthermore, the provisions of Sections 10.5 through 10.11 shall apply, but Sections containing specific time periods relative to the obligations shall be modified as follows:

(i) In Section 10.5, the phrase “forty (40) calendar days past the due date of the undisputed Unpaid Charges” shall be modified to read “thirty-two (32) days past the conclusion of the Formal Dispute Resolution process;”

(ii) In Section 10.6, the phrase “forty-five (45) calendar days past the due date of such Unpaid Charges” shall be modified to read “thirty-seven (37) days past the conclusion of the Formal Dispute Resolution process;”

(iii) In Section 10.7, the parenthetical “(fifty (50) calendar days past the due date for such undisputed Unpaid Charges)” shall be deleted;

(iv) In Section 10.8, the parenthetical “(eighty (80) calendar days past the due date for TCG-KC’s undisputed Unpaid Charges)” shall be deleted.

(v) Further, Sections 10.5 through 10.11 shall be modified to read “FDR Amounts” wherever the phrase “Unpaid Charges” is found.

- 10.2 Pending the resolution of any dispute raised in accordance with Section 9 of this Agreement, whether by settlement or by final and nonappealable arbitration award, ruling, order or judgment, each Party shall continue to perform all of its obligations under this Agreement, and shall not, based upon an act or omission that is the subject of the dispute that is pending resolution, exercise any right of termination or disconnection under this Section 10, unless otherwise directed by the other Party.
- 10.3 If TCG-KC fails to pay when due, any and all charges, including any applicable interest, that are billed to TCG-KC for resale services and network elements furnished under this Agreement and are not disputed under Section 8.5, above (“Unpaid Charges”), and any portion of such Unpaid Charges remain unpaid after the due date, SWBT shall provide written notification to TCG-KC’s billing department (with a copy to the address for TCG-KC pursuant to Section 11 below) that in order to avoid having service disconnected, TCG-KC must remit all such Unpaid Charges to SWBT. With respect to resale services and network elements, SWBT will notify TCG-KC that such Unpaid Charges remain unpaid fifteen (15) calendar days after the due date and that TCG-KC must remit payment within fourteen (14) calendar days from the date TCG-KC’s billing department receives SWBT’s notice, except as otherwise provided in Sections 8.5 through 8.10, governing bona fide billing disputes. No payment made by TCG-KC following notice by SWBT as provided in this Section shall prejudice or otherwise adversely affect TCG-KC’s right to dispute the Unpaid Charges, once paid, pursuant to Section 8.4, above. For the purposes of this Section 10.3, SWBT may give notice to TCG-KC billing department as follows, unless TCG-KC notifies SWBT otherwise:

For SBC Notices Regarding Bills to TCG
US Postal Service or Overnight Delivery:

Tom Rooney, AT&T Carrier Billing Manager
ABM North, Room 335
429 Ridge Road
Dayton, New Jersey 08810
Notice Fax: 732-392-4115
Overnight Package Phone No: 732-392-4045

- 10.4 If any Unpaid Charges for resale services or network elements remain unpaid twenty-nine (29) calendar days past the due date of such Unpaid Charges, SWBT shall notify TCG-KC and the Commission that unless all such Unpaid Charges are paid within sixteen (16) calendar days, the resale services and network elements furnished to TCG-KC under this Agreement for which undisputed Unpaid Charges are outstanding (i.e., delinquent) shall be disconnected. This notice shall further specify that for any of TCG-KC's Resale end Users whose local service will be so disconnected, SWBT shall cause such Resale end Users to be defaulted to SWBT local service. On the same day that it sends the letter required by this sub-Section 10.4, SWBT will suspend acceptance of any order (other than a disconnect order) from TCG-KC for any resale service or network element that could be furnished under this Agreement.
- 10.5 If any undisputed Unpaid Charges for resale services or network elements remain unpaid forty (40) calendar days past the due date of the undisputed Unpaid Charges, TCG-KC shall, at its sole expense, notify its end users and the Commission that the end users' service will be disconnected due to TCG-KC's failure to pay such Unpaid Charges, and that its end users must affirmatively select a new Local Service Provider within five (5) calendar days of the notice date. This notice shall also advise TCG-KC's Resale end users that SWBT may assume the end user's account at the end of the five (5) calendar day period should the end user fail to select a new Local Service Provider in the interim
- 10.6 If any undisputed Unpaid Charges for resale services or network elements furnished to TCG-KC under this Agreement remain unpaid forty-five (45) calendar days past the due date of such Unpaid Charges, SWBT shall disconnect the resale services or network elements for which such undisputed charges remain unpaid. On the same date that such resale services are disconnected, SWBT shall cause Resale end users of the services disconnected in accordance with this Section who have not selected another local service provider to be transferred directly to SWBT's local service. To the extent available at retail from SWBT, the Resale end users transferred to SWBT's local service shall receive the same services provided through TCG-KC immediately prior to the time of transfer. SWBT shall inform the Commission of the names of all Resale end users transferred through this process. Applicable conversion charges and service establishment charges for transferring Resale end users from TCG-KC to SWBT as specified in this Section 10.6 shall be billed to, and paid by, TCG-KC.
- 10.7 Within five (5) calendar days after the transfer (fifty (50) calendar days past the due date for such undisputed Unpaid Charges), SWBT shall notify all transferred Resale end users that because of TCG-KC's failure to pay SWBT, their local service is now being provided by SWBT. SWBT shall also notify each transferred Resale end user that the Resale end user has thirty (30) calendar days to select a new Local Service Provider.

- 10.8 If any Resale end user transferred to SWBT's local service pursuant to Section 10.6 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer to SWBT's local service (eighty (80) calendar days past the due date for TCG-KC's undisputed Unpaid Charges), SWBT shall terminate that Resale end user's service. SWBT shall notify the Commission of the names of all such end users whose service has been terminated pursuant to this Section 10.8. The transferred Resale end user shall be responsible for any and all charges incurred during the selection period.
- 10.9 SWBT may discontinue service to TCG-KC as provided in Section 10.6 of this Agreement only after SWBT has sent all notices it is required to send as provided in Sections 9 and 10, and shall have no liability to TCG-KC or TCG-KC's end users in the event of such disconnection.
- 10.10 Nothing in this Agreement shall be interpreted to obligate SWBT to continue to provide service to any transferred end user beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SWBT has with regard to such end users.
- 10.11 Once all notices SWBT is required to send under Sections 9 and 10 have been sent, SWBT shall not be required to accept any order (other than a disconnect order) relating to resale services or network elements from TCG-KC until (i) all undisputed Unpaid Charges for resale services and network elements under this Agreement are paid; and (ii) TCG-KC has furnished SWBT a deposit calculated pursuant to the terms and conditions of Section 8.11 of this Agreement.

11.0 Notices

- 11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

11.2 If to TCG-KC:

Billing Notices:

**For SBC Notices Involving Billings by TCG
US Postal Service or Overnight Delivery:**

TCG Carrier Billing Manager
200 South Laurel Avenue
Middletown, NJ 07748
Notice Fax: 732-368-8930
Overnight Package Phone No: 732-420-6180

**For SBC Notices Regarding Bills to TCG
US Postal Service or Overnight Delivery:**

Tom Rooney
TCG Carrier Billing Manager
ABM North, Room 335
429 Ridge Road
Dayton, New Jersey 08810
Notice Fax: 732-392-4115
Overnight Package Phone No: 732-392-4045

All Notices Other than Billing:

TCG Vice President
c/o Kathleen Whiteaker
TCG District Manager
809 Cobblestone Court
Cedar Hill, Texas 75104
972-291-8867 (Fax); 972-293-8608 (voice contact)

With a copy of all notices to the following:

Miguel (Mickey) Baeza
Senior Attorney
TCG
5501 LBJ Freeway, Suite 346
Dallas, Texas 75240-6202
281-664-9647 (Fax); 972-778-3537 (voice contact)

11.3 If to SWBT:

SBC 13 State Contact
Contract Management
Attn: Notices Manager
311 S. Akard, 9th Floor
Dallas, Texas 75202-5398
214-464-2006 (Fax)

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

12.0 Taxes

- 12.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, these Taxes shall be billed as a separate item on the invoice.
- 12.2 With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by applicable law and tariffs to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. The following provisions govern the backbilling of Taxes by the providing Party:
- 12.2.1 Taxes for which the purchasing Party is liable: with respect to Taxes for which the purchasing Party is liable, the providing Party shall use reasonable best efforts to bill the purchasing Party for such Tax simultaneously with the bill for service to which the Tax relates; however, the purchasing Party shall remain responsible for such Tax for the applicable statute of limitations period.

- 12.2.2 Taxes for which the providing Party is liable: With respect to Taxes for which the providing Party is liable, the providing Party may backbill the purchasing Party for any surcharges based on such Taxes and permitted by Applicable Law, subject to the same time limits that apply to the services to which the Taxes relate, as set forth in Section 2.3 of Attachment 28, Comprehensive Billing Attachment.
- 12.2.3 Notwithstanding Section 12.2.2 above, if as a result of a notice of proposed adjustment by a taxing authority, the taxing authority imposes a Tax on the providing party, the providing party may back bill the Tax to the purchasing party for a period, not exceed four years from the date of the notice of proposed adjustment. In order for the providing party to be permitted to backbill a tax under this Section, the purchasing party must be notified of the audit determination from which the surcharge results, within 30 days of the notice of proposed adjustment but in no event less than ten days before the last day, under applicable law, for the purchasing party to exercise any rights it might have to contest the notice of proposed adjustment.
- 12.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by applicable law as reflected in appropriate tariff(s) on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 12.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax to the extent provided in Section 12.2 above and all subsections thereunder; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.

- 12.5 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 12.6 If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 12.7 To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If applicable law as reflected in appropriate tariff(s) excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 12.8 With respect to any Tax or Tax controversy covered by this Section 12, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and as reflected in appropriate tariff(s) and at its own expense, any a Tax that it previously billed, or was billed that it is ultimately obligated to pay. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

- 12.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 12 shall be sent in accordance with Section 11 hereof.

13.0 Force Majeure

Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, and upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

14.0 Publicity

- 14.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 14.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

15.0 Network Maintenance and Management

- 15.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.

- 15.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party will maintain the capability of respectively implementing basic protective controls such as "Cancel To" or "Call Gap."
- 15.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

16.0 Law Enforcement and Civil Process

16.1 Intercept Devices

- 16.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a customer of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.

16.2 Subpoenas

- 16.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving party is able to do so; if response requires the assistance of the other party such assistance will be provided.

16.3 Law Enforcement Emergencies

- 16.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

17.0 Changes in Subscriber Carrier Selection

- 17.1 With respect to Resale services and unbundled Network Elements provided to end users, each Party must obtain end user authorization prior to requesting a change in the end users' provider of local exchange service (including ordering end user specific Network Elements) and must retain such authorizations for twelve (12) months. The authorization must conform with federal rules regarding changes of presubscribed interexchange carriers until such time as there are federal or state rules applicable to changes of local exchange service providers. Thereafter, the authorization must comply with each such rule. The Party submitting the change request assumes responsibility for applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996.
- 17.2 Only an end user can initiate a challenge to a change in its local exchange service provider. In connection with such challenges each Party will follow procedures which conform with federal rules regarding challenges to changes of presubscribed interexchange carriers until such time as there are federal or state rules applicable to challenges to changes of Local Exchange Service Providers. Thereafter, the procedures each Party will follow concerning challenges to changes of local exchange service providers will comply with such rule. If an end user notified SWBT or TCG-KC that the end user requests local exchange service, the Party receiving such request shall be free to immediately provide service to such end user. SWBT shall be free to connect the end user to any local service provider based upon the local service provider's request and assurance that proper end user authorization has been obtained. TCG-KC shall make authorization available to SWBT upon request and at no charge.
- 17.3 When an end user changes or withdraws authorization, each Party will release customer specific facilities in accordance with the end user customer's directions, or the directions of the end user's agent. Further, when an end user abandons the premise, SWBT is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.

- 17.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service ("slamming") on behalf of the other Party or a third party. If SWBT, on behalf of TCG-KC, agrees to investigate an alleged incidence of slamming, SWBT shall charge TCG-KC a cost-based or mutually agreed investigation fee.

18.0 Amendments or Waivers

- 18.1 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.
- 18.2 [Applies only to Elected Provisions.] Pursuant to Attachment 6, Section 14.8, and for the time periods specified in Attachment 6, Section 14, SWBT expressly waives its right to assert that it need not provide pursuant to the "necessary and impair" standard of FTA Section 251(d)(2) a network element set forth in Attachment 6, Unbundled Network Elements, Sections 3-11 and/or its rights with regard to the combination of any such network elements that are not already assembled pursuant to the provisions in Attachment 6, Section 14. By entering into this Agreement to obtain the benefits set forth herein in whole or in part, SWBT expressly waives its right to challenge the terms of this Agreement in any judicial, dispute resolution or regulatory proceeding, except that SWBT expressly reserves the right to seek clarification or interpretation of the terms of this Agreement through the dispute resolution process established by the Commission or challenge in any judicial, dispute resolution or regulatory proceeding the interpretation of this agreement or any agreement containing the same or substantively similar language to this Agreement; such right to seek clarification or interpretation or challenge the interpretation also includes the right to appeal the final judicial, dispute resolution or regulatory decision and to continue to pursue pending appeals. When any final decision is rendered by the appellate court, the affected contract provision shall be revised to reflect the result of such appeal except those relating to the prices and other terms and conditions at issue in SWBT vs. Missouri Public Service Commission, et al., Case Nos. 99-3833 and 99-3908 in the United States Court of Appeals for the 8th Circuit. Any dispute between the Parties regarding the manner in which this Agreement should be modified to reflect the affect of the appellate court decision shall be resolved by the Commission. SWBT also expressly reserves the right to contest any order or decision requiring the payment of reciprocal compensation for ISP traffic, including the right to

seek refunds or to implement an alternate approach to such reciprocal compensation pursuant to regulatory or judicial approval. Except as provided in this Section, SWBT reserves the right to pursue pending appeals and to appeal any other state or federal regulatory decision, but, absent a stay or reversal, will comply with any such final decision. Nothing in this Agreement limits SWBT's right or ability to participate in any proceedings regarding the proper interpretation and/or application of the FTA.

- 18.2.1 In order to execute an amendment to this Agreement, a Party shall request such amendment in writing. Such request shall include details regarding the Section or Sections to be amended and shall include the proposed language changes.
- 18.2.2 Within 30 days from its receipt of the request, the other Party shall accept the proposed amendment in writing or shall deliver written notice to the other party either rejecting the requested amendment in its entirety, or inviting the prompt commencement of good faith negotiations to arrive at mutually acceptable terms. If the non-requesting Party rejects the requested amendment in its entirety, the requesting Party may request the prompt commencement of good faith negotiations to arrive at mutually acceptable terms, but there shall be no obligation on either Party to continue such negotiations longer than a period of 45 days if the Parties cannot arrive at mutually acceptable amendment terms.
- 18.2.3 If mutually acceptable terms are not agreed upon within 45 days after the delivery of the written notice requesting the commencement of negotiations, or if at any time during this period (or a mutually agreed upon extension of this period), the Parties have ceased to negotiate (other than by mutual agreement) for a period of 10 consecutive days, the amendment shall be resolved in accordance with the Dispute Resolution provisions set forth in Section 9 of this Agreement. Neither Party may pursue dispute resolution pursuant to this Section 18.2.3 with respect to any matter that, if agreed to by the other Party, would have the effect of incorporating into the Agreement a provision that the Party proposing the amendment had unsuccessfully sought in any arbitration pursuant to Section 252 of the Act leading to the adoption of this Agreement. Further, neither Party may invoke the provisions of this Section 18.2.3 more than once during the term of the Agreement.
- 18.2.4 Nothing in this Section 18.2 shall affect the right of either Party to pursue an amendment to this Agreement pursuant to Section 3 (Intervening Law), or Section 252(i) of the Act.

18.3 [Applies only to the Elected Provisions.] By entering into this Agreement to obtain the benefits set forth herein in whole or in part, TCG-KC expressly waives its right to challenge the terms of this Agreement in any judicial, dispute resolution or regulatory proceeding, except that TCG-KC expressly reserves the right to seek clarification or interpretation of the terms of this Agreement through the dispute resolution process established by the Commission or challenge in any judicial, dispute resolution or regulatory proceeding the interpretation of this agreement or any agreement containing the same or substantially similar language to this agreement; such right to seek clarification or interpretation or challenge the interpretation also includes the right to appeal the final judicial, dispute resolution or regulatory decision and to continue to pursue pending appeals. When a final decision is rendered by the appellate court, the affected contract provision shall be revised to reflect the result of such appeal. Any dispute between the Parties regarding the manner in which this Agreement should be modified to reflect the effect of the appellate court decision shall be resolved by the Commission. TCG-KC expressly reserves the right to contest any order or decision requiring the payment of reciprocal compensation for ISP traffic, including the right to seek refunds or to implement an alternate approach to such reciprocal compensation pursuant to regulatory or judicial approval. Except as provided in this Section, TCG-KC reserves the right to pursue pending appeals and to appeal any other state or federal regulatory decision, but, absent a stay or reversal, will comply with any such final decision. Nothing in this Agreement limits TCG-KC's right or ability to participate in any proceedings regarding the proper interpretation and/or application of the FTA.

19.0 Authority

19.1 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.

20.0 Binding Effect

20.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

20.2 Intentionally left blank.

20.2.1 Intentionally left blank.

- 20.3 Nothing in this Agreement shall be interpreted to waive either Party's rights, remedies or arguments challenging or promoting the use of "type 92" or "category 92" records or to prejudice either Party from raising such rights, remedies or arguments in any proceeding challenging or promoting "type 92" or "category 92" records or their use and seeking to have the same preserved, modified, eliminated or replaced. Provided, nothing herein shall serve to expand or improve either Party's position in such a proceeding to the extent the Party's position has not been advanced or is otherwise prejudiced or barred. Should any such proceeding result in a final, nonappealable order requiring modification of the terms and conditions of this Agreement relative to "type 92" or "category 92" records or their use and such order not be stayed, the Parties shall negotiate terms and conditions to amend this Agreement accordingly, and shall negotiate an orderly transition plan to effectuate any necessary changes.

21.0 Consent

- 21.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

22.0 Expenses

- 22.1 Except as specifically set out in this Agreement, each party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

23.0 Headings

- 23.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

24.0 Relationship of Parties

- 24.1 This Agreement will not establish, be interpreted as establishing, or be used by either party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

25.0 Conflict of Interest

25.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

26.0 Multiple Counterparts

26.1 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.

27.0 Third Party Beneficiaries

27.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and will not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

28.0 Regulatory Approval

28.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.

29.0 Trademarks and Trade Names

29.1 Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party, provided, however, that nothing herein shall be deemed to preclude either Party from engaging in lawful comparative advertising.

30.0 Regulatory Authority

- 30.1 SWBT will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. TCG-KC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to TCG-KC Customers contemplated by this Agreement. TCG-KC will reasonably cooperate with SWBT in obtaining and maintaining any required approvals for which SWBT is responsible, and SWBT will reasonably cooperate with TCG-KC in obtaining and maintaining any required approvals for which TCG-KC is responsible.
- 30.2 SWBT will not, of its own volition, file a tariff or make another similar filing which supersedes this Agreement in whole or in part. SWBT will make no filings which are inconsistent with this commitment. This Section is not intended to apply to any SWBT tariffs or filings which do not affect TCG-KC's rights or SWBT's obligations to TCG-KC under this Agreement. This Section does not impair SWBT's right to file tariffs nor does it impair SWBT's right to file tariffs proposing new products and services and changes in the prices, terms and conditions of existing products and services, including discontinuance or grandfathering of existing features or services, of any telecommunications services that SWBT provides or hereafter provides to TCG-KC under this Agreement pursuant to the provision of Attachment 1: Resale, nor does it impair TCG-KC's right to contest such tariffs before the appropriate Commission.
- 30.3 SWBT will provide TCG-KC notice of any tariff or filing which concerns the subject matter of this Agreement at the time a Preliminary Rate Authority (PRA) is transmitted to the state commission, or, in situations where a PRA would not be issued, within ninety (90) days (forty five (45) days for price changes) of the expected effective date of the tariff or filing.
- 30.4 In the event that SWBT is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, SWBT will provide TCG-KC notice of the same as set forth in Section 30.3 above.
- 30.5 If any tariff referred to in Section 30.4 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.

31.0 Commission Interpretation of Same or Substantively Similar Language

- *31.1 As to the Elected Provisions, any ruling by the Commission interpreting the same or substantively similar language in another interconnection agreement is applicable to the same or substantively similar language in this Agreement.

32.0 Verification Reviews

- 32.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of the other Party's billing and invoicing. The Parties may employ other persons or firms for this purpose. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 32.2 Each Party will promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the other Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in Section 9 of this Agreement.
- 32.3 Each Party will cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the Party's bills. The audit will be conducted during normal business hours at an office designated by the Party being audited. The Parties agree to retain records of call detail for two years from when the calls were initially reported to the other Party.
- 32.4 Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by TCG-KC for Resale services, Network Elements, Combinations or usage based charges provided during the period covered by the audit.
- 32.5 Except as may be otherwise provided in this Agreement, audits will be at the auditing Party's expense.

- 32.6 Upon (i) the discovery by either Party of overcharges not previously reimbursed to the other Party or (ii) the resolution of disputed audits, the affected Party will promptly reimburse the other Party the amount of any overpayment itself, plus any applicable interest, calculated in accordance with the methods stated in Section 8.2 above. In no event, however, will interest be assessed on any previously assessed or accrued late payment charges.
- 32.7 TCG-KC may require that, at the end of the first year of implementation of this Agreement, SWBT submit to an audit or examination of services performed under the interconnection agreement. Subsequent to the first year of implementation, TCG-KC may require that audits or examinations be performed if: (1) TCG-KC can show cause that it has a commercially reasonable basis to seek an audit or examination; and (2) the request for audit or examination specifically defines the particular services that it seeks to audit or examine. All audits requested by TCG-KC under this Section shall be conducted at its expense. The dispute resolution provisions of Section 9 of this Agreement shall be used to resolve disputes arising concerning requests for audits or examinations, or the results of the audits or examinations.
- 32.8 This Section 32 also applies to the audit of books, records, and other documents related to the development of the percent local usage (PLU) used to measure and settle jurisdictionally unidentified traffic, including but not limited to calls for which calling party number (CPN) is not transmitted, in connection with Attachment 12: Compensation. If the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the nine (9) month period following the completion of the audit. If as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.
- 32.9 Information obtained or received by TCG-KC in conducting the inspections described in Section 32.7 and information obtained or received by either Party in connection with Sections 32.1 through 32.6 and 32.8 will be subject to the confidentiality provisions of Section 6 of this Agreement.

33.0 Complete Terms

- 33.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

- 33.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.

34.0 Cooperation on Preventing End User Fraud

- 34.1 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 34.2 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation referenced in the above Section will include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the end user's permission to obtain such information.

35.0 Notice of Network Changes/Notification of Other Information

- 35.1 SWBT agrees to provide TCG-KC reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of services using SWBT's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SWBT's ability to upgrade its network through the incorporation of new equipment, new software or otherwise so long as such upgrades are not inconsistent with SWBT's obligations to TCG-KC under the terms of this Agreement.
- *35.2 SWBT communicates official information to competitive local exchange carriers via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.
- *35.3 In SWBT, TCG-KC may elect in writing to receive Accessible Letter notification via electronic mail ("e-mail") distribution, either in lieu of or in addition to United States Postal Service (postage prepaid) distribution.
- *35.4 In SWBT, TCG-KC may designate an unlimited number of recipients for Accessible Letter notification via e-mail, but TCG-KC is limited to designating a maximum of four (4) recipients (in addition to the TCG-KC contact designated in Section 11) for Accessible Letter notification via United States Postal Service (postage prepaid).

*35.5 In SWBT, TCG-KC shall submit a completed Notices / Accessible Letter Recipient Change Request Form (available on the applicable SWBT's CLEC Handbook website) to the individual specified on that form to designate in writing each individual (other than the TCG-KC contact designated in Section 11.2) to whom TCG-KC requests Accessible Letter notification be sent, whether via e-mail or United States Postal Service. TCG-KC shall submit a completed Notices / Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of Accessible Letters (other than the TCG-KC contact designated in Section 11.2). Any completed Notices / Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) days following receipt by SWBT.

35.6 SBC-SWBT only:

In addition to the other provisions and requirements in this Agreement, SWBT shall provide a toll free facsimile number to TCG-KC for the submission of requests for Resale Services and Network Elements under this Agreement; TCG-KC shall provide SWBT with a toll free facsimile number for notices from SWBT relating to requests for Resale Services and Network Elements under this Agreement.

36.0 Good Faith Performance

36.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

37.0 Responsibility of Each Party

37.1 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. Each party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its

contractors' or agents' activities at the Work Locations. 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.

38.0 This Section has been intentionally omitted.

39.0 Governmental Compliance

39.1 TCG-KC and SWBT each will comply at its own expense with all applicable law (including, but not limited to, Part 64 of the rules of the Federal Communications Commission) related to i) its obligations under or activities in connection with this Agreement or ii) its activities undertaken at, in connection with or relating to Work Locations. TCG-KC and SWBT each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. SWBT, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for SWBT to provide the Network Elements and Resale services pursuant to this Agreement.

40.0 Responsibility for Environmental Contamination

40.1 Disclosure of Potential Hazards: When and if TCG-KC notifies SWBT that TCG-KC intends to enter or perform work pursuant to this Agreement in, on, or within the vicinity of any particular SWBT building, manhole, pole, duct, conduit, right-of-way, or other facility (hereinafter "Work Location"), SWBT shall timely notify TCG-KC of any Environmental Hazard at that Work Location of which SWBT has actual knowledge, except that this duty shall not apply to any Environmental Hazard (i) of which TCG-KC already has actual knowledge or (ii) was caused solely by TCG-KC or (iii) would be obvious and apparent to anyone coming to the Work Location. For purposes of this Agreement, "Environmental Hazard" shall mean (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or

conditions reasonably likely to give rise to such concentrations; (ii) the presence of electrical cable in a conduit system; (iii) asbestos-containing materials; (iv) emergency exit routes and warning systems, if and to the extent owned or operated by SWBT; and (v) any potential hazard that would not be obvious to an individual entering the Work Location or detectable using work practices standard in the industry.

- 40.2 Evaluation of Potential Hazards: Without limiting the foregoing, after providing prior notice to SWBT, TCG-KC shall have the right to inspect, test, or monitor any Work Location for possible Environmental Hazards as necessary or appropriate to comply with law or to protect its employees, contractors or others from the possible effects of Environmental Hazards. TCG-KC shall be responsible for conducting such inspections, testing or monitoring in a way that does not unreasonably interfere with SWBT's business operations after consultation with SWBT, and shall return SWBT's property to substantially the same condition as it would have been without such inspections, testing or monitoring.
- 40.3 Managing Disturbed Materials and Media: If and to the extent that TCG-KC's activity at any Work Location involves the excavation, extraction, or removal of asbestos or other manmade materials or contaminated soil, groundwater, or other environmental media, then TCG-KC rather than SWBT shall be responsible in the first instance for the subsequent treatment, disposal, or other management of such materials and media.
- 40.4 Indemnification:
- 40.4.1 Each party shall indemnify, on request defend, and hold harmless the other party and each of its officers, directors and employees from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of this Section 40.0 or any federal, state, or local environmental statute, rule, regulation, ordinance, or other applicable law or provision of this agreement dealing with hazardous substances or protection of human health or the environment.
- 40.4.2 TCG-KC shall indemnify, on request defend, and hold harmless SWBT and each of its officers, directors and employees from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, loss, or

damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of TCG-KC, or by any person acting on TCG-KC's behalf, while at a Work Location or (ii) the removal or disposal of any hazardous substances by any employee of TCG-KC or by any person acting on TCG-KC's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a Work Location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance caused or created by TCG-KC or its contractors or agents.

40.4.3 SWBT shall indemnify, on request defend, and hold harmless TCG-KC and each of its officers, directors and employees from any and all suits, claims, demands, losses, damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), asserted by any government agency or other third party on account of or in connection with any injury, loss, or damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of SWBT or by any person acting on SWBT's behalf, at a Work Location or (ii) the removal or disposal of any hazardous substances by any employee of SWBT or by any person acting on SWBT's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a Work Location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance either (x) existing or occurring at any Work Location on or before the date of this agreement or (y) caused or created by SWBT or its contractors or agents.

41.0 Subcontracting

41.1 If any obligation is performed through a subcontractor, each party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either party performs through subcontractors, and each party will be solely responsible for payments due the party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of Resale services or Network Elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a third party beneficiary for any

purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

42.0 Referenced Documents

- 42.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, TCG-KC Practice, SWBT Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, TCG-KC Practice, SWBT Practice, or publication of industry standards.

43.0 Severability

- 43.1 Except as otherwise specifically provided in Sections 4.2.1, 18.1, 18.2 and 18.3 of the General Terms & Conditions (those Sections being applicable only to the Elected Provisions), if any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 9.5.

44.0 Survival of Obligations

- 44.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

45.0 Governing Law

- *45.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State of Missouri other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Jefferson City, MO and waive any and all objections to a Missouri venue.

46.0 Performance Criteria

- 46.1 Specific provisions governing failure to meet Performance Criteria are contained in Attachment 17: Performance Remedy Plan.

47.0 Other Obligations of TCG-KC

- 47.1 For the purposes of establishing service and providing efficient and consolidated billing to TCG-KC, TCG-KC is required to provide SWBT its authorized and nationally recognized Operating Company Number (OCN).

48.0 Dialing Parity

- 48.1 SWBT will ensure that all TCG-KC Customers experience the same dialing parity as similarly-situated customers of SWBT services, such that, for all call types: (i) a TCG-KC Customer is not required to dial any greater number of digits than a similarly-situated SWBT customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by a TCG-KC Customer is at least equal in quality to that experienced by a similarly-situated SWBT customer; and (iii) the TCG-KC Customer may retain its local telephone number.

49.0 Branding

- 49.1 Specific provisions concerning the branding of services provided to TCG-KC by SWBT under this Agreement are contained in the following Attachments and Appendices to this Agreement: Attachment 1: Resale; Appendix OS-Resale; Appendix DA-Resale; and Ordering & Provisioning-Resale; Attachment 3: Maintenance-Resale; Attachment 7: Ordering & Provisioning-Unbundled Network Elements; Attachment 8: Maintenance-Unbundled Network Elements.

50.0 Customer Inquiries

- 50.1 Each Party will use its best efforts to ensure that all of its representatives who receive inquiries regarding the other Party's services: (i) refer repair inquiries to the other Party at a telephone number provided by that Party; (ii) for other inquiries about the other Party's services or products, refer callers to telephone number(s) provided by that Party; and (iii) do not in any way disparage or discriminate against the other Party or its products or services.

51.0 Disclaimer of Warranties

- 51.1 TO THE EXTENT CONSISTENT WITH ITS OBLIGATIONS UNDER THE ACT, SWBT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER.

52.0 No Waiver

- 52.1 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 duly executed on behalf of the Party against whom the waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. 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. By entering into this Agreement neither Party waives any rights granted to them pursuant to the Act.

53.0 Definitions

- 53.1 Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. 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.

54.0 Resale

- 54.1 At the request of TCG-KC, and pursuant to the requirements of the Act, any telecommunications service that SWBT currently provides or hereafter offers to any customer in the geographic area where SWBT is the incumbent LEC will be made available to TCG-KC by SWBT for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

55.0 Unbundled Network Elements

- 55.1 At the request of TCG-KC and pursuant to the requirements of the Act, SWBT will offer in the geographic area where SWBT is the incumbent LEC Network Elements to TCG-KC on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific Provisions concerning Unbundled Network Elements are addressed in Attachment 6: Unbundled Network Elements, and other applicable Attachments.

56.0 Ordering and Provisioning, Maintenance, Connectivity Billing and Recording, and Provision of Customer Usage Data

- 56.1 In connection with its Resale of services to TCG-KC, SWBT agrees to provide to TCG-KC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in this Agreement.
- 56.2 In connection with its furnishing Unbundled Networks Elements to TCG-KC, SWBT agrees to provide to TCG-KC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in Attachments OSS and Billing, respectively.
- 56.3 The Parties' reservations of rights relative to "type 92" or "category 92" records is at Section 20.3 above.

57.0 Network Interconnection Architecture

- 57.1 Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SWBT expressly recognizes that

this provision and said Attachment are in no way intended to impair in any way TCG-KC's right to interconnect with unbundled Network Elements furnished by SWBT at any technically feasible point within SWBT's network, as provided in the Act.

58.0 Compensation for Delivery of Traffic

- 58.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation.

59.0 Ancillary Functions

Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SWBT agrees to provide Ancillary Functions to TCG-KC as set forth in Attachment 13: Ancillary Functions.

60.0 Other Requirements and Attachments

- 60.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; Unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.
- 60.2 Appended to this Agreement and incorporated herein are the Attachments listed below. To the extent that any definitions, terms or conditions in any given Attachment differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment. In particular, if an Attachment contains a term length that differs from the term length in the main body of this Agreement, the term length of that Attachment will control the length of time that services or activities are to occur under the Attachment, but will not affect the term length of the remainder of this Agreement, except as may be necessary to interpret the Attachment.

Resale

Attachment 1: Resale

Appendix Services/Pricing

Exhibit A: SWBT's Telecommunications Services Available for Resale

Exhibit B: SWBT's Other Services Available for Resale

Appendix Customized Routing-Resale

Appendix DA-Resale

Appendix OS-Resale

Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

Attachment 4: Connectivity Billing-Resale

Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

Appendix Pricing – UNE

Appendix Pricing – UNE: Exhibit 1

*Appendix Pricing – UNE Schedule of Prices

Attachment 7: Ordering and Provisioning – UNE

Exhibit A-Electronic Ordering and Provisioning-UNE

Attachment 8: Maintenance-UNE

Attachment 9: Billing-Other

Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture (Parts A – G)

Appendix Inward

Attachment 12: Compensation

Ancillary Functions

Attachment 13: Ancillary Functions

Appendix Physical Collocation

Appendix Virtual Collocation

Appendix Poles, Conduit, ROW

Other Requirements

Attachment 14: Location Routing Number - PNP

Attachment 15: E911

Attachment 16: Network Security and Law Enforcement

Attachment 17: Performance Remedy Plan

Appendix 1 Performance Measures Subject to Tier-1 and Tier-2 Damages Identified as High, Medium and Low

Appendix 2 Measurements Subject to Per Occurrence Damages or Assessment with a Cap and Measurements Subject to Per Measure Damages or Assessment

Appendix 3 Performance Measurement Business Rules (Version 1.7)

Attachment 18: Mutual Exchange of Directory Listing Information

Attachment 19: White Pages-Other (WP-O)

Attachment 20: Clearinghouse

Attachment 21: Numbering

Attachment 22: DA-Facilities Based

Attachment 23: OS-Facilities Based

Attachment 24: Recording-Facilities Based

Attachment 25: xDSL

Appendix HFPL

Attachment 26: Legitimately Related Provisions

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

TCG Kansas City	SBC Telecommunications Inc. for Southwestern Bell Telephone Company
_____ Sign and Print Name: Date	_____ Sign and Print Name: Date
_____ Position/Title	_____ Position/Title