

**EXHIBIT 3**

**TRAFFIC TERMINATION AGREEMENT**

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by and between

**Illinois Bell Telephone, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company and Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin** hereinafter referred to as SBC-ILEC

and

**ICG Communications, Inc.**

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**EXHIBIT A**

## **TRAFFIC TERMINATION AGREEMENT**

This Traffic Termination Agreement ("Agreement") is by and between SBC-ILEC, in its capacity as an incumbent local exchange carrier and, ICG Communications, Inc. (a Delaware corporation) ("ICG") "in its capacity as a local exchange carrier" (jointly referred to as "the Parties") and (1 for the traffic exchanged between their End Users in separate and discernable exchanges, or (2 for a Foreign NXX arrangement. The specific geographic areas that are covered by this Agreement are set forth Exhibit "A," which is attached hereto and incorporated herein by this reference.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will 1) terminate local and toll traffic on each others networks, 2) pass transiting traffic across each others facilities and, 3) interconnect their networks;

WHEREAS, this Agreement is an integrated package that reflects a balancing of interests critical to the Parties. The Parties agree that their entry into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters related to the same types of arrangements covered in this Agreement;

WHEREAS, this Agreement is based upon certain technical, network and OSS attributes and limitations, and is consistent with the laws and regulatory requirements of, the respective State(s) of Illinois, Indiana, Michigan, Missouri, Nevada, Ohio, Texas and Wisconsin ("Applicable State(s)"). Thus, recognizing there are differences between the technical, network and OSS attributes and limitations of the various **SBC ILECs** and ICG and between the laws and regulatory requirements of various states, the Parties acknowledge and agree that this Agreement shall only apply to the Applicable State(s) and shall be limited to the exchange/termination of traffic between the Parties in the specific geographic areas in such State(s) which are identified on Exhibit "A" to this Agreement.

NOW, THEREFORE, **SBC ILEC** and LEC hereby agree as follows:

### **1.0 DEFINITIONS**

Except as otherwise specified herein, the definitions set forth below in this Section shall apply to all Sections and/or Appendices contained in this Agreement. To the extent that there may be any conflict between a definition set forth in this Section and any language in another Section or Appendix, the language set forth in such other Section or Appendix shall control with respect to that Section or Appendix.

1.1 "Access Carrier Name Abbreviation" (ACNA) is a three digit alpha code used for billing and identification of a Telecommunications Carrier that is typically assigned by Telcordia.

- 1.2 “**Affiliate**” is as defined in the Act.
- 1.3 “**Applicable Law**” means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 1.4 “**Automated Message Accounting**” (AMA) is a structure inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.
- 1.5 “**Automatic Number Identification**” (ANI) means the number transmitted through the network identifying the calling party.
- 1.6 “**Business Day**” means Monday through Friday, excluding holidays on which the applicable SBC ILEC does not provision new retail services and products.
- 1.7 “**Calling Party Number**” (CPN) means a Signaling System 7 “SS7” parameter whereby the ten (10) digit number of the calling Party is forwarded from the End Office.
- 1.8 “**Central office switch**” (Central Office) is a switching entity within the public switched telecommunications network, including but not limited to:
- 1.8.1 “**End Office Switch**” or “**End Office**” is a switching machine that **directly** terminates traffic to and receives traffic from purchasers of local exchange services. An End Office Switch does not include a PBX.
- 1.8.2 “**Tandem Office Switch**” or “**Tandem(s)**” are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 1.9 “**Claim**” means any pending or threatened claim, action, proceeding or suit.
- 1.10 “**Commission**” means:
- 1.10.1 the Arkansas Public Service Commission (AR-PSC);
- 1.10.2 the Public Utilities Commission of the State of California (CA-PUC);
- 1.10.3 Intentionally left blank;
- 1.10.4 the Illinois Commerce Commission (IL-CC);
- 1.10.5 the Indiana Utilities Regulatory Commission (IN-URC)
- 1.10.6 the Kansas Corporation Commission (KS-CC);

- 1.10.7 the Michigan Public Service Commission (MI-PSC);
  - 1.10.8 the Missouri Public Service Commission (MO-PSC);
  - 1.10.9 the Public Utilities Commission of Nevada (NV-PUC);
  - 1.10.10 the Public Utilities Commission of Ohio (PUC-OH);
  - 1.10.11 the Oklahoma Corporation Commission (OK-CC);
  - 1.10.12 the Public Utility Commission of Texas (PUC-TX); and
  - 1.10.13 the Public Service Commission of Wisconsin (PSC-WI).
- 1.11 **“Common Channel Signaling” (CCS)** means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 1.12 **“Common Language Location Identifier” (CLLI)** codes provide a unique 11-character representation of a network interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.
- 1.13 **“Consequential Damages”** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.
- 1.14 **“Delaying Event”** means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 1.14.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
  - 1.14.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
  - 1.14.3 any Force Majeure Event.
- 1.15 **“EAS”** is a generic term applied to locally dialed calls originated by one Party's End Users and terminated to the other Party's End Users. These can be classified as either local mandatory EAS, optional one-way EAS, or optional two-way EAS. EAS generically applies to all expanded calling plan names

referenced in the ILEC's applicable Local, General, or EAS Tariffs, such as EMS, EACS, ECC and Local Plus.

- 1.16 **“Electronic File Transfer”** is any system or process that utilizes an electronic format and protocol to send or receive data files.
- 1.17 **“End Users”** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties. As used herein, the term “End Users” does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.
- 1.18 **“Enhanced Service Provider” (ESP)** is a provider of enhanced services as those services are defined in 47 CFR Section 64.702.
- 1.19 **“Exchange Access”** is as defined in the Act.
- 1.20 **“Exchange Area”** means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.21 **“Exchange Service”** means Telephone Exchange Service, As Defined in the Act.
- 1.22 **“Feature Group A” (FGA)** means calls either originated by, or delivered to, an End User who has purchased switched access FGA service from the interstate or intrastate tariffs of either Party. FGA also includes, but is not limited to, FGA-like services provided by either Party, where calls are originated from and/or delivered to numbers which are assigned to a Rate Center within one LATA but where the Party receiving the call is physically located in a LATA different than the LATA of the Party originating the call.

The intercarrier compensation mechanism as well as additional definitions for FGA are specified in the appropriate Appendix FGA or in separate agreement between the parties.

- 1.23 **“Feature Group D” (FG-D)** is access available to all customers, providing trunk side access to a Party's End Office Switches with an associated uniform 101XXXX access code for customer's use in originating and terminating communications.
- 1.24 **“FCC”** means the Federal Communications Commission.
- 1.25 **“Foreign Exchange (FX)”** services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX



customer's physical location and customers in the foreign exchange. FX services can be either interLATA or intraLATA. IntraLATA FX, when provided by two or more local exchange carriers "LECs", is considered a jointly provided service and meet-point billed by those providing it utilizing a mutually agreed to meet-point billing, or meet-point billing like procedure. There are two types of FX services:

- 1.25.1 **"Dedicated FX Traffic"** shall mean those calls routed by means of a physical, dedicated circuit delivering dial tone or otherwise serving an end user's station from a serving Central Office (also known as End Office) located outside of that station's mandatory local calling area. Dedicated FX Service permits the subscribing end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in that "foreign" exchange.
- 1.25.2 **"Foreign Exchange -NXX (FX-NXX) Traffic"** and **"FX-type Traffic"** shall refer to those calls delivered to telephone numbers that are rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient end user's station assigned that telephone number is physically located outside of that mandatory local calling area. FX-NXX Service also permits an end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, "foreign," exchange, thereby creating a local presence in the "foreign" exchange. FX-NXX Service differs from Dedicated FX Service, however, in that FX-NXX end users continue to draw dial tone or are otherwise served from a Central (or End) Office physically located within their mandatory local calling area, whereas Dedicated FX Service end users draw dial tone or are otherwise served from a Central (or End) Office located outside their mandatory calling area.
- 1.26 **"Governmental Authority"** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 1.27 **"Internet Service Provider" (ISP)** is an Enhanced Service Provider that provides Internet Services and is defined in Paragraph 341 of the FCC's First Report and Order in CC Docket 97-158.
- 1.28 **"Incumbent Local Exchange Carrier" (ILEC)** is as defined in the Act.
- 1.29 **"Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.

- 1.30 **“Interconnection”** is as defined in the Act.
- 1.31 **“Interexchange Carrier” (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 1.32 **“InterLATA”** is as defined in the Act.
- 1.33 **“IntraLATA Toll Traffic”** means the IntraLATA traffic between two locations within one LATA where one of the locations lies outside of the normal local calling area as defined by the applicable Commission.
- 1.34 **“Local Access Transport Area” (LATA)** is as defined in the Act.
- 1.35 **“Local Calls”** are calls where the originating End User of one Party and the terminating End User of the other Party are both physically located within the same common local mandatory calling area.
- 1.36 **“Local Exchange Carrier” (LEC)** is as defined in the Act.
- 1.37 **“Local Exchange Routing Guide” (LERG)** is a Telcordia Reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as Network element and equipment designations.
- 1.38 **“Local Mandatory EAS Calls”** for purposes of intercarrier compensation, is local traffic where all calls are within the same common mandatory calling area, i.e., within the same or different **SBC ILEC** Exchange(s) that participate in the same common mandatory calling area approved by the applicable State Commission. Local Calls must actually originate and actually terminate to parties physically located within the common mandatory calling area.
- 1.39 **“Local Number Portability”** means the ability of users of Telecommunications Services to retain, at the same location, the presence of a previously existing telephone number(s).
- 1.40 **“Location Routing Number” (LRN)** is a ten (10) digit number that is assigned to the network switching elements (Central Office – Host and Remotes as required) for the routing of calls in the network. The first six (6) digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch.
- 1.41 **“Loss” or “Losses”** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys’ fees).

- 1.42 **“Mandatory Calling Area”** means an arrangement that requires End Users to subscribe to a local calling area beyond their basic exchange.
- 1.43 **“Meet-Point Billing” (MPB)** refers to the billing associated with interconnection of facilities between two or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 1.44 **“Minutes of Use” (MOU)** means the conversation minutes between the originating and terminating End Users.
- 1.45 **“Mutual Compensation”** is the compensation agreed upon by the Parties for those “Local Calls” that originate on one network and terminate on the other network.
- 1.46 **“Network Element”** is as defined in the Act.
- 1.47 **“North American Numbering Plan” (NANP)** is a numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.
- 1.48 **“Numbering Plan Area” (NPA)** also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.
- 1.49 **“Number Portability”** is as defined in the Act.
- 1.50 **“NXX” or “Central Office Code”** is the three-digit switch entity indicator that is defined by the fourth through sixth digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 1.51 **“Operating Company Number” (OCN)** is a number typically assigned to a Telecommunications Carrier by the National Exchange Carrier Association (NECA).

- 1.52 **“Party”** means either LEC or the SBC ILEC; use of the term “Party” includes each of the SBC ILEC(s) that is a Party to this Agreement. “Parties” means both LEC and each of the SBC ILEC(s) that is a Party to this Agreement.
- 1.53 **“Person”** means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 1.54 **“Private Line Services”** include private line-like and special access services and are not subject to reciprocal compensation. Private Line Services are defined as dedicated telecommunications channels provided between two points or switched among multiple points and are used for voice, data, audio or video transmission. Private Line services include, but are not limited to, WATS access lines, frame relay, ATM, and DSL. The compensation mechanisms for Private Line Services are specified in the Special Services Intrastate IntraLATA Agreement.
- 1.55 **“Rate Center Area”** means the following in each applicable area:

[SBC-AMERITECH]

**“Rate Center”** means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center.]

[OR]

[NEVADA]

**“Rate Center”** denotes the designated points, representing exchanges, (or locations outside exchange areas), between which mileage measurements are made for the application of interexchange mileage rates. Rate Centers are defined in PUC-NV tariff A6.2.7.]

[OR]

[PACIFIC]

**“Rate Center”** denotes the designated points, representing exchanges or district area (or locations outside exchange areas), between which mileage measurements are made for the application of interexchange and interdistrict mileage rates, as defined by the CA-PUC.A2, 2.1.1 Definition of Terms.]

[OR]

**[SBC-SWBT]**

**“Rate Center”** means an uniquely defined geographical location within an exchange area (or a location outside the exchange area) for which mileage measurements are determined for the application of interstate tariffs.

- 1.56 **“Rating Point”** means the V&H coordinates associated with a particular telephone number for rating purposes.
- 1.57 **“Serving Wire Center”** The wire center from which service is provided to the end user.
- 1.58 **“Signaling System 7” (SS7)** means a signaling protocol used by the CCS Network.
- 1.59 **“Telcordia Technologies”** - Formally known as Bellcore, a wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.
- 1.60 **“Telecommunications”** is as defined in the Act.
- 1.61 **“Telecommunications Carrier”** is as defined in the Act.
- 1.62 **“Telecommunications Service”** is as defined in the Act.
- 1.63 **“Telephone Exchange Service”** is as defined in the Act.
- 1.64 **“Telephone Toll Service”** is as defined in the Act.
- 1.65 **“Third Party”** means any Person other than a Party.
- 1.66 **“Transit”** means intermediate transport and/or switching of local traffic by a Party which neither originates nor terminates that traffic on its network and is acting solely as an intermediary.
- 1.67 **“Trunk”** means a communication line between two switching systems.

- 1.68 **“Undefined Terms”**. The Parties acknowledge that terms may appear in this Agreement which are not defined and agree that any such terms shall be construed in accordance with their usage in the telecommunications industry as of the effective date of this Agreement, or absent such usage, the common meaning.
- 1.69 **“Wire Center”** means the location where the carrier terminates local lines, with the necessary testing facilities to maintain them. A wire center may have one or several local switches.
- 1.70 **“Wireless Service Provider” (WSP)** means a radio common carrier provider of domestic public wireless or wireless telecommunication service, as defined in Part 2, Subpart H or Part 24, of the FCC Rules and Regulations.
- 1.71 In SBC Ameritech:
- “Switched Exchange Access Service”** means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services.

## **2.0 NETWORK ARCHITECTURE**

- 2.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.
- 2.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for network traffic management issues to the other's surveillance management center.
- 2.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

- 2.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Such alternative routing shall be used only when mutually agreed to by the Parties.

The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

- 2.5 The Parties agree that, unless otherwise mutually negotiated, the quality of such network connections shall be equal to that of the existing facilities that are jointly provided by each Party.

### **3.0 NETWORK CONNECTIONS**

- 3.1 In each exchange area in which either Party wishes to exchange traffic with the other Party's End Users and/or utilize the other Party's facilities for a transiting function, each Party, at a minimum, will:

- 3.1.1 Route such traffic via direct network facilities to either a) each others access and local tandem(s) or End Offices (upon mutual agreement of the parties), meeting the other Party's facilities at the existing Exchange Area Boundary (EAB) (see section 3.2.2 for exclusions); or b) another mutually agreed upon point.

3.1.1.1 Specific facility arrangements required to interconnect the Parties' networks shall be negotiated by the Parties'. Where the LEC providing FX-NXX service, also operates as a CLEC within **SBC ILEC** exchange, and whose switch is located in the **SBC ILEC** exchange; the existing interconnection facility between the parties' within the **SBC ILEC** exchange may be considered as an option for interconnection, provided a separate and distinct portion of this existing facility can be established as further defined below in section 3.5.

3.1.1.2 For FX-NXX service, the interconnection facilities and trunks between the Parties' networks shall only be used for traffic exchanged between the Parties'. No Third Party traffic shall be routed over these facilities, except where ICG is unable to interconnect with Rural/Independent Telecommunications Carriers (or any other "exempted" carriers). Notwithstanding this exception, ICG will exert reasonable effort to interconnect with such Carriers.

- 3.1.2 Route such traffic to the other Party utilizing a Third Party incumbent LECs facilities and/or utilizing another Third Party Telecommunications Carrier's facilities with whom the Party already has an agreement for exchanging like traffic. The Parties acknowledge and agree that this option may not be implemented without the written agreement of the Third Party incumbent LEC and/or Telecommunications Carrier as well as the mutual consent of each of the Parties. The Parties further agree that in order for this option to be considered, it is the responsibility of the originating Party to obtain the required written permission from the Third Party incumbent LEC and/or Telecommunications Carrier.
- 3.2 The Parties acknowledge and agree that when traffic destined for an **SBC ILEC** tandem exceeds a DS1's amount of traffic and/or that it is more efficient to connect via direct End Office connections, ICG shall establish a direct End Office trunk group and provide transport for that trunk group to the exchange where the **SBC ILEC** or Third Party incumbent LEC's and /or Telecommunications Carrier's End Office is located. In a FX-NXX arrangement, the LEC agrees to directly connect to all Third Partys' for the routing of the traffic associated with this service. FX-NXX shall not be transited over the **SBC ILEC**'s network except where ICG is unable to interconnect with Rural/Independent Telecommunications Carriers (or any other "exempted" carriers). Notwithstanding this exception, ICG will exert reasonable effort to interconnect with such Carriers .
- 3.2.1 The Parties agree, that at a minimum, ICG shall establish a logical trunk group for local and IntraLata traffic from ICG to each **SBC ILEC** serving tandem in a LATA. This requirement may be waived upon mutual agreement of the parties.
- 3.2.2 Transport facilities for 911, Choke, OS/DA and InterLATA trunking are the responsibility of LEC from LEC to the serving tandem or platform that provides each such service type; The parties recognize in data-only applications such trunking may not be necessary and therefore this requirement shall be waived by SBC-ILEC.
- 3.3 ICG shall route originating Local, and IntraLATA Toll Calls to the serving tandem as defined by the tandem owner in the LERG. If **SBC ILEC** is the designated InterLATA serving tandem provider for the Rate Center of concern, **SBC ILEC** shall verbally designate the specific InterLATA tandem(s) that will serve ICG.
- 3.4 If **SBC ILEC** is not the serving tandem as reflected in the LERG, then ICG may route local and/or IntraLATA traffic destined for End Office End Users that subtend an **SBC ILEC** tandem directly to the serving **SBC ILEC** tandem



or End Office, as described by Bellcore Notes On The Networks, upon mutual agreement of the Parties. Such tandem routing of other traffic types may be considered and effected upon mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

- 3.5 If ICG utilizes the switch of a Third Party incumbent LEC, the LEC's own facilities within SBC ILEC exchange, as outlined in section 3.1.1.1 above and/or any other Telecommunications Carrier to switch LEC's calls; ICG must provide the following as separate and distinct from the Third Party carrier or existing facilities.
- 3.5.1 OCN;
  - 3.5.2 ACNA;
  - 3.5.3 Trunk Groups with unique Trunk CLLI codes;
  - 3.5.4 Point Code, or may use the Point Code of a Third Party incumbent LEC's, the LEC's own existing and/or Telecommunications Carrier's switch, but only if each entity (LEC and the Third Party carrier) does not duplicate TCIC codes on the separate and distinct trunk groups maintained by each carrier. It is the responsibility of ICG and the Third Party carrier to inventory the numbering of TCIC codes on the trunk groups unique to each entity;
  - 3.5.5 Switch CLLI/Pseudo Switch CLLI; and
  - 3.5.6 LRN (when applicable).
- 3.6 Except as otherwise provided in this Agreement, the Parties understand and agree that SBC ILEC, upon ten (10) days notice to ICG, may block any traffic that is improperly routed by ICG over any trunk groups to SBC ILEC and/or which is routed outside of the mutual agreement of the Parties.
- 3.7 SBC ILEC shall not compensate any Third Party incumbent LEC and/or Telecommunications Carrier for Local, ECC, Toll, IXC or any other traffic that is inappropriately routed to SBC ILEC (as reflected in the LERG). Any compensation due SBC ILEC for such misrouted traffic shall be paid by ICG. The appropriateness of such routing and the correct SBC ILEC serving tandems are reflected by SBC ILEC in the LERG. This also includes traffic that is destined to End Offices that do not subtend SBC ILEC tandem.
- 3.8 Within thirty (30) days from the Effective Date of this Agreement, the Parties agree to have met and developed joint planning and forecasting responsibilities which are applicable to services described in this Agreement. Either Party may

delay processing the other Party's service orders should the Parties not perform obligations as specified in this Section. Such responsibilities shall include but are not limited to the following:

- 3.8.1 The Parties will establish periodic reviews of network and technology plans and will notify one another, when commercially practicable no later than six (6) months in advance of changes that would impact either Party's provision of services.
- 3.8.2 The Parties will furnish to each other, information that provides for state-wide annual forecasts of order activity, in-service quantity forecasts, and facility/demand forecasts.
- 3.8.3 The Parties will develop joint forecasting responsibilities for traffic utilization over trunk groups and yearly forecasted trunk quantities.
- 3.8.4 The Parties shall notify each other promptly of changes greater than ten percent (10%) to current forecasts (increase or decrease) that generate a shift in the demand curve for the following forecasting period.
- 3.9 The Parties agree that if either Party establishes additional tandems in an exchange, the other Party may also connect to the additional tandems, and must re-home traffic upon industry notification if either Party establishes a tandem to relieve the first tandem of call congestion.
- 3.10 Neither Party shall deliver traffic destined to terminate at the other Party's End Office via another LEC's End Office. In addition, except as otherwise provided in this Agreement, neither Party shall deliver traffic destined to terminate at an End Office subtending the other Party's access tandem via another LEC's tandem. Either Party may deliver traffic destined to terminate at the other Party's End Office via another LEC's tandem provided that the Parties have established a compensation agreement(s) specific to this arrangement, including but not limited to a transiting compensation agreement, and the Parties and the Third-Party tandem owner are in agreement with such arrangement
- 3.11 Connection of a logical trunk group from ICG to a Party's local tandem(s) will provide the connecting Party local accessibility to a Party's End Offices and NXXs which subtend that tandem(s), and to other LEC's which are connected to that tandem(s). Connection of a logical trunk group from ICG to a Party's End Office(s) will provide the connecting Party accessibility only to the NXXs served by that individual End Office(s) to which the connecting Party interconnects.

- 3.12 Connection of a logical trunk group to a Party's tandem will provide the connecting Party access to the first Party's End Offices, IXCs, LECs and WSPs as served by the respective serving tandem(s) for the aforementioned call-types.

#### **4.0 IDENTIFICATION AND CLASSIFICATION OF TRAFFIC**

- 4.1 Telecommunications traffic exchanged between the Parties will be classified as either Local Mandatory EAS, Optional One-Way or Two-Way EAS, Transit, ISP, FX, FGA, FX-NXX, IntraLATA Toll, or InterLATA Toll Traffic.
- 4.2 For purposes of this Agreement, the reciprocal compensation terms set forth herein shall apply solely to traffic that both originates and terminates to End Users located within Local Mandatory EAS calling areas.
- 4.3 Locally dialed calls are Local Calls or toll-free calls that appear to the public to be local. These normally are seven or ten digit-dialed calls without a 1+ prefix. Local Calls are always locally dialed, but not all locally dialed calls are considered Local Calls for compensation purposes. For purposes of this Agreement, the dialing arrangement does not itself dictate the compensation mechanism or classification of traffic.
- 4.4 For purposes of computing compensation only, and not for purposes of routing traffic on the network, traffic will be segregated within the recording and billing systems on a jurisdictional basis as either Toll or EAS in nature. The retail EAS traffic will be further segregated between Local Mandatory EAS and Optional EAS plan traffic, as applicable, and shall in all cases be separately identified unless otherwise agreed to by both Parties.
- 4.5 Nothing in this Agreement shall allow either Party to aggregate traffic for the purpose of avoiding compensation under the arrangements described in this Section(s). The Parties agree that all traffic discussed in this Section(s) including, but not limited to, Local Mandatory Traffic, Optional One-Way EAS Traffic, Optional Two-Way EAS Traffic, as well as any other optional EAS arrangements, is solely for the use of each Party's End User. End User resale, subscriber aggregation with non-subscribers, traffic aggregation with non-subscribers, or incorporation of prohibited service combinations that change the intended purpose of the service are specifically prohibited, and the Parties agree to enforce the prohibition. An example of such prohibition is the extended use of call forwarding within an optional calling service area, which would allow an avoidance of toll charges by any Person(s) other than the original End User subscriber.
- 4.6 Each Party will include, where available, in the information transmitted to the other for each call being terminated on and/or transiting the other's network the originating Calling Party Number (CPN).

- 4.7 When CPN is technically available in a Party's switch, all calls originated in that switch by one Party and passed without CPN to the other Party may be billed by the terminating party as switched access. Where CPN is passed by the originating Party but removed by the transiting Party for technical reasons, the transiting Party will comply with Section 9, "Meet Point Billing", and deliver appropriate records so that the terminating Party may appropriately identify such traffic as local.
- 4.8 Calls involving telephone numbers assigned to one exchange Rate Center, as referenced in the LERG, but where the End User is located in another exchange Rate Center, shall be considered as either FX or FGA. Further, these FX or FGA calls that originate and terminate outside the common Local Mandatory EAS calling area are not Local Calls for intercarrier compensation and are not subject to local reciprocal compensation. These arrangements, and their compensation, are to be handled in their own Appendix to this Agreement or in separate agreement(s) between the Parties.
- 4.9 Private Line Services include private line-like and special access services and are not subject to local reciprocal compensation. Private Line Services are defined as dedicated Telecommunications channels provided between two points or switched among multiple points and are used for voice, data, audio or video transmission. Private Line services include, but are not limited to, WATS access lines.
- 4.10 Reciprocal Compensation applies to Local Calls that are terminated at either Party's terminating circuit and/or soft switch. Traffic that is delivered via dedicated circuits, private line services or Digital Subscriber Line (DSL) service to a LEC or ISP and not terminated at a circuit switch is not subject to intercarrier compensation.
- 4.11 Nothing in this Agreement shall be construed to limit or otherwise adversely impact in any manner either Party's right to employ or to request and be assigned any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines, or to establish, by tariff or otherwise, Exchanges and Rating Points corresponding to such NXX codes. Each Party is responsible for administering the NXX codes it is assigned to ensure compliance with the industry-approved Central Office Code (NXX) Assignment Guidelines (April 1997) and the FCC's Second Report & Order in CC Docket 95-116, released August 18, 1997 (Local Number Portability). Both Parties shall obtain separate NXX codes for each and every Rate Center in which they choose to operate. This will enable each Party to identify the jurisdictional nature of traffic for intercompany compensation until such time as both Parties have implemented billing and routing capabilities to determine traffic jurisdiction on a basis other than NXX codes.

## 5.0 LOCAL MANDATORY AND OPTIONAL EAS TRAFFIC

- 5.1 Locally dialed calls originated by one Party's End Users and terminated to the other Party's End Users will be classified as Local Mandatory EAS, Optional One-Way EAS, or Optional Two-Way EAS. EAS generically applies to all expanded calling plan names referenced in the ILEC's applicable Commission-ordered Local, General, or EAS Tariffs, including but not limited to, Extended Metropolitan Service (EMS), Extended Area Calling Service (EACS), Extended Community Calling (ECC) and Local Plus.
- 5.2 EAS traffic must actually originate and actually terminate to End User physically located within Commission approved EAS calling areas, and must be mutually recognized and identified as such by both Parties in the arrangement.
- 5.3 The Parties to this Agreement acknowledge and agree that they do not currently possess recording or measurement systems to provide full-detailed recording of Local Mandatory and Optional One-Way and Two-Way EAS Traffic. Until such time as full-detailed recordings become available, the Parties agree to utilize traffic studies, surrogate models, benchmark data or other agreed or negotiated methods to estimate traffic for compensation purposes.
- 5.4 OPTIONAL ONE-WAY EAS TRAFFIC

- 5.4.1 The Parties agree that Optional One-Way EAS plans exist when participating companies allow the purchasing End User to pay a premium to place outbound calls on a toll free basis within a specific geographic area that is greater than that End User's normal local calling scope. The Parties also agree that such Optional One-Way EAS plans are made available to their End Users under the auspices of Commission-ordered Local, General Exchange or hybrid tariffs.
- 5.4.2 The Parties mutually concur that this Agreement does not require the other party to participate in any future One-Way EAS plans.
- 5.4.3 The Parties mutually agree that compensation for the exchange of One-Way EAS traffic will be determined by the following formula:

$$240 \text{ minutes} \times B\text{-RATE} \times A\text{-END USERS} \times ((B\text{-PEU}) / (\text{TOTAL PEU}))$$

Where:

company A = Originating plan company (paying company)  
company B = Terminating company (company to be paid)

B-RATE = Stated contract rate for terminating company B reflected below

A-End Users = Number of originating subscribers in company A's plan

B-PEU = terminating company B's participating End Users

TOTAL PEU = TOTAL of all terminating companies' participating End Users

5.4.4 **“Participating End Users ”** means the adjusted End User access line count reflecting the projected terminating call path pattern or volume.

5.4.5 The B Rate used for terminating compensation for all exchanges and the resulting compensation for this service are contained in Exhibit A, attached hereto and incorporated by reference.

## 5.5 OPTIONAL TWO-WAY EAS TRAFFIC

5.5.1 Optional Two-Way EAS plans exist when participating companies allow the purchasing End User to pay a premium to place calls on a toll free basis, and provides for return calls to be made on a toll free basis within a specific geographical area that is greater than that End Users' normal local calling scope.

5.5.2 The Parties acknowledge and agree that this Agreement does not require either party to participate in future Optional Two-Way calling plans.

5.5.3 The Parties mutually agree that compensation for the exchange of optional two-way plan traffic will be determined by the following formula:

$$400 \times \$0.0183 \times A\text{-END USERS} \times ((B\text{-PEU}) / (TOTAL PEU)) - \\ 266 \times \$0.0183 \times A\text{-END USERS} \times ((B\text{-PEU}) / (TOTAL PEU)) + \\ 266 \times LTA\_RATE \times A\text{-END USERS} \times ((B\text{-PEU}) / (TOTAL PEU))$$

Where:

Company A = Originating plan company (paying company)

Company B = Terminating company (company to be paid)

A-End Users = Number of originating subscribers in company A's plan

B-PEU = terminating company B's participating End Users

TOTAL PEU = TOTAL of all terminating companies participating End Users

LTA\_RATE = applicable lost toll additive rate from below.

5.5.4 The Parties agree that the Party offering the Optional Two-Way EAS plan to its End Users will provide lost toll compensation to the other Party in recognition that the return call is required to be dialed and billed as a Local Call. Compensation will not apply if this same call originated

from a End User who also subscribes to a calling plan which itself allows this call to be placed as a locally dialed non-toll, EAS call. Until and unless updated within Exhibit A, the lost toll compensation will be \$.024/MOU in metropolitan areas and \$.0355/MOU for non-metropolitan areas, as those areas are defined in the applicable Commission-ordered SBC ILEC Local Exchange Tariff.

5.5.5 The B Rate used for terminating compensation for all exchanges and the resulting compensation for this service are contained in Exhibit "A," which is attached hereto and incorporated herein by this reference.

## 5.6 MANDATORY ONE-WAY EAS TRAFFIC

5.6.1 The Parties agree that Mandatory One-Way EAS plans exist when participating companies allow the purchasing End User to pay a premium to place outbound calls on a toll free basis within a specific geographic area that is greater than that End User's normal local calling scope. The Parties also agree that such Mandatory One-Way EAS plans are made available to their End Users under the auspices of Commission-ordered Local, General Exchange or hybrid tariffs.

5.6.2 The Parties mutually concur that this Agreement does not require the other party to participate in any future One-Way EAS plans.

5.6.3 The Parties mutually agree that compensation for the exchange of Mandatory One-Way EAS traffic will be determined by the following formula:

$$\text{XXX minutes X B-RATE}(\$.XXXX) \text{ A-END USERS(ILEC)} / (\text{B-PEU}) / (\text{TOTAL PEU}) \text{ Market share}$$

Where:

Company A = Originating plan company (paying company, ILEC)

Company B = Terminating company (company to be paid, SBC Company)

B-RATE = Stated contract rate for terminating company B (SBC Company \$.XXXX)

A-End Users = Number of originating subscribers in company A's (ILEC) plan

B-PEU = terminating company B's participating End Users

TOTAL PEU = TOTAL of all terminating companies' participating End Users

5.6.4 **"Participating End Users"** means the adjusted End User access line count reflecting the projected terminating call path pattern or volume.

5.6.5 The B Rate used for terminating compensation for all exchanges and the resulting compensation for this service are contained in Exhibit A, attached hereto and incorporated by reference.

5.7 **MANDATORY TWO-WAY LOCAL EAS**

The Parties agree to compensate each other for the exchange of Mandatory Two-Way Local EAS traffic in accordance with the reciprocal compensation rate set for in Exhibit A. Mandatory Two-Way Local EAS traffic is traffic which originates and terminates within an exchange or exchanges which are deemed as mandatory two-way EAS as determined by the Commission.

**6.0 ISP TRAFFIC**

6.1 For purposes of this Agreement, until such time that the **SBC ILEC**(s) may choose to invoke the FCC's ISP pricing plan as ordered in FCC 01-131, the Parties agree that Local Mandatory EAS calls and ISP traffic will be compensated at the same rates and rate structures, depending on the End Office or Tandem serving arrangement, so long as the originating End User of one Party and the terminating End User or ISP of the other Party are both physically located within the same common mandatory calling area such that the call is deemed as a "Local Call" for purposes of compensation.

6.2 The Parties agree that, for the purposes of this Agreement, either Parties' End Users remain free to place ISP calls on a retail toll ("non-Local" and "non EAS") basis. To the extent such retail toll calls are placed to an ISP, the Parties agree that Section 6.1 above does not apply, and that the Agreement's rates, terms and conditions for IntraLATA and/or InterLATA calling shall apply, including but not limited to rating and routing according to the terminating parties' Exchange Access intrastate and/or interstate tariffs.

6.3 The Parties agree that physical interconnection, routing, and trunking of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA, shall be as specified in the Agreement for all other traffic exchanged, including but not limited to, the need to route over Meet Point Billed trunks.

6.4 **RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS**

6.4.1 The Parties acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Compensation Order.") The Parties agree that by executing this Agreement and carrying out the intercarrier compensation terms and conditions herein, neither Party waives any of its rights, and expressly reserves all of its rights, under the ISP Compensation Order, including but not limited to the **SBC ILEC**(s)'s option to invoke on a date specified by the **SBC ILEC**(s) the FCC's ISP terminating



compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

- 6.4.2 The SBC ILEC(s) agrees to provide 20 days advance written notice to the person designated to receive official contract notices in this Agreement of the date upon which the SBC ILEC(s) designates that the FCC's ISP terminating compensation plan shall begin in this state. The Parties agree that on the date designated by the SBC ILEC(s), the Parties will begin billing Reciprocal Compensation to each other at the rates, terms and conditions specified in the FCC's terminating compensation plan.
- 6.4.3 The Parties agree to carry out the FCC terminating compensation plan on the date designated by the SBC ILEC(s) without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP and Internet-bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By entering into this Agreement, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.
- 6.4.4 Should a regulatory agency, court or legislature change or nullify the SBC ILEC(s)'s designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among ILEC, CLEC and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Agreement.
- 6.4.5 The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court could order an injunction, stay or other retroactive ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions.
- 6.4.6 Because of the possibilities in Section 6.4.5, above, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the Parties will also

agree that any billing true ups, reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to apply to all traffic among ILEC, CLEC, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Agreement.

6.4.7 The Parties further acknowledge that the FCC has issued a Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally. *See, In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92; established in Notice of Proposed Rulemaking Order No. 01-132, April 27, 2001. In the event that a final, legally binding FCC Order is issued upon the conclusion of that NPRM proceeding and during the term of this Agreement, the Parties agree to conform this Agreement to the compensation procedures set forth in that Order, unless otherwise mutually agreed by both Parties in writing.

6.4.8 The Parties agree to that the foregoing terms, and conditions for the exchange of ISP-bound and Internet-bound traffic are subject to all rules, regulations, and interpretations of that traffic as Information Access pursuant to section 201 of the Act and FCC implementing orders, as opposed to sections 251 and 252 of the Act.

6.4.9 The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol (VOIP) or other Internet Telephony traffic under the Dispute Resolution provisions of this Agreement. The Parties further agree that this Agreement shall not be construed against either Party as a "meeting of the minds" that VOIP or Internet Telephony traffic is or is not a Local Call subject to reciprocal compensation. By entering into this Agreement, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

## **7.0 TRANSITING TRAFFIC**

7.1 Local EAS traffic which originates on one of the Parties networks and which is passed to the other Party, transits the other Party's facilities and does not terminate to an End User belonging to that Party, is classified as "Transiting Traffic" under this Agreement and will be subject to the transiting rate compensation as discussed below. Traffic must be considered and recognized as a Local EAS service offering, as described above, by both the originating and terminating companies to be eligible for Local EAS Transit rates. Transiting traffic will include, but not be limited to, traffic originating on a Party's network which transits the other Party's facilities and is delivered to a third party such as a Wireless Service Provider (WSP) or another Local Exchange Carrier.

7.2 The “In-Region” Area Transit Traffic rate element applies to Local traffic that originates on one Party’s network, transits the other Party’s facilities (the transiting party) and terminates to a Third Party located within the exchange area of the transiting party. The Parties’ mandatory and optional EAS exchange areas for each calling scope are listed in their respective tariffs.

7.3 The Out of Region Transit Rate applies to local traffic that originates on one Party’s network, transits the other Party’s facilities and terminates to a Third Party that is not located within the exchange area of the Party providing the transiting function. For this rate to apply, both the originating and terminating Parties must agree that the exchange of the traffic will be on a Local EAS basis. Although the Parties acknowledge that direct connections could be used for this traffic, the Parties agree to perform the transiting function for this traffic at the Out of Region Transit Rate outlined below:

7.4

<b>Type of Transit Traffic</b>	<b>Prices Per MOU</b>
In-Region Transit Rate	\$0.004
(Out of Region) Transit Rate	\$0.006

7.4.1 The transiting traffic compensation rates are contained on Exhibit “A” to this Agreement.

7.5 All other traffic which transits a tandem shall be treated as non-local, non-EAS, toll traffic subject to Meet-Point Billing and will be subject to compensation as provided in each Party’s applicable tariff, unless otherwise agreed.

7.6 When transit traffic through the Tandem from a Party to another Local Exchange Carrier, CLEC or WSP requires 24 or more trunks, that Party shall establish a direct End Office trunk group between itself and the other Local Exchange Carrier, CLEC or wireless carrier. When a transiting Party is requested by the tandem owner to establish direct trunking to other carriers, that Party shall establish and route their traffic over these facilities within 120 days of the request. Exceptions may be permitted if technological limitations or facility shortages exist. If the requested Party fails to establish or migrate their transiting traffic as requested, then the billing for such traffic will be in accordance with traffic trunk equivalent (“TTE”) rates below.

7.7 The Parties agree that transiting traffic whose volumes exceed 74,330 MOUs per month in one direction to any single terminating CLLI (this is the equivalent of 12 trunks of originating traffic in a 24 two-way trunk group) will be billed for the transiting function on the basis of a trunk equivalent charge instead of the

MOU rate. The rate for this usage will be based on a per trunk equivalent charge of \$71.34 per month for each originating traffic trunk equivalent. The originating TTE is calculated by assuming that transit traffic destined to any single CLLI is moved into its own unique trunk group. That trunk group is then sized based on the monthly MOU destined to that single CLLI. The TTE will be the basis of compensation for the transiting function associated with traffic sent by the originating party to the specific CLLI until the transit traffic is removed from the tandem onto direct facilities of the originating Party. All other transiting traffic will be billed at the appropriate rates as described above.

7.8 In the event one Party originates traffic that transits the second Party's network to reach a third party Telecommunications Carrier with whom the originating Party does not have a traffic interexchange agreement, then the originating Party will indemnify the second Party against any and all charges levied by such Third Party Telecommunications Carrier for traffic that was transited in accordance with the requirements as set forth in Section 9, "Meet Point Billing", including any termination charges related to such traffic and any attorneys fees and expenses. The terminating party and the tandem provider will bill their respective portions of the charges directly to the originating party, and neither the terminating party nor the tandem provider will be required to function as a billing intermediary, e.g. clearinghouse.

7.9 Neither Party shall bill the other Party for terminating any Transit traffic, whether identified or unidentified, i.e. whether CPN is sent or is not sent by the originating party, or removed or not removed by the transiting party.

## **8.0 INTRASTATE INTRALATA INTERCOMPANY TRAFFIC**

8.1 Traffic which originates from one of the Party's End Users and terminates to the other Party's End User within the same LATA, is not associated with Wireless Service Providers and is not specifically identified as any other traffic classification will be considered Intrastate IntraLATA for purposes of this Agreement and is subject to the Intrastate IntraLATA rate compensation as discussed in Section 8.2 below.

8.2 For intrastate IntraLATA Toll Traffic between the Parties' respective End Users, compensation for termination of such traffic to End Users on the Parties' networks will be at each Party's terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service or 800 like toll-free incoming service, as set forth in the applicable State's Intrastate Switched Access Tariff. The Parties agree that they will conform to existing Applicable State industry practices related to intrastate intraLATA traffic as contained in the appropriate State-applicable Intrastate IntraLATA Compensation Plan which contains procedures for the recording, record exchange and billing of intrastate intraLATA traffic. The Parties further agree these procedures will be utilized for purposes of

inter-company settlements under this Section and that each Party will create and exchange of Access Usage Records (“AURs”).

9. **MEET-POINT-BILLING (MPB) and SWITCHED ACCESS TRAFFIC COMPENSATION**

- 9.1 Intercarrier compensation for Switched Access Traffic shall be on a MPB basis as described below.
- 9.2 The Parties will establish MPB arrangements in order to provide Switched Access Services to IXC and ESPs via the respective carrier’s Tandem Office Switch switches in accordance with the MPB guidelines adopted by and either contained in, or upon approval to be added in future to the Ordering and Billing Forum’s MECOD and MECAB documents.
- 9.3 Billing to IXCs and ESPs for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates to the IXC. The Residual Interconnection Charge (RIC), if any, will be billed by the Party providing the End Office function.
- 9.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 9.5 As detailed in the MECAB document, the Parties will, in accordance with appropriate billing cycle intervals defined herein, exchange all information necessary to accurately, reliably and promptly bill Third Parties for Switched Access Services traffic jointly handled by the Parties via the Meet Point arrangement. Information shall be exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The initial billing company (IBC) will provide the information to the subsequent billing company within ten (10) working days of sending the IBC's bills. The exchange of records to accommodate MPB will be on a reciprocal, no charge basis.
- 9.6 MPB shall also apply to all jointly provided MOU traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs) which may likewise be designated for such traffic in the future where the responsible Party is an IXC or ESP. When one Party to this Agreement performs 800 database queries, that Party will charge the End Office provider for the database query in accordance with standard industry practices.

- 9.7 Each Party shall coordinate and exchange the Billing Account Reference (BAR) and Billing Account Cross Reference (BACR) numbers for the Meet Point Billing service. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number.
- 9.8 For purposes of this Agreement the Party to whom the End Office Switch belongs is the IBC and the Party to whom the Tandem Office Switch belongs is the secondary billing company. The secondary billing company will provide the IBC with the Exchange Access detailed usage data within thirty (30) days of the recording date. The IBC will provide to the secondary billing company the Exchange Access summary usage data within ten (10) working days of the IBC's bill date to the IXC and/or ESP. The exchange of Access Usage Records ("AURs") to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.
- 9.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

**10. GENERAL RESPONSIBILITIES OF THE PARTIES**

- 10.1 Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the other Party.
- 10.2 The type of originating calling number transmitted depends on the protocol of the trunk signaling used for interconnection. Traditional protocol will be used with Multi-Frequency (MF) and SS7 signaling, and ANI will be sent from the originating Party's End Office switch to the terminating Party's tandem or End Office switch.
- 10.3 Where applicable, it is the responsibility of each Party to originate and transmit complete and unaltered calling party number (CPN), as received by an originating party. Where one Party is passing Calling Party Number (CPN) but the other Party is not properly receiving information, the Parties will cooperate to jurisdictionalize and rate the traffic correctly. Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format as referenced in Telcordia Technologies BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance

with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

- 10.4 Each Party is responsible to input required data into Routing Data Base Systems (RDBS) and into the Telcordia Technologies Rating Administrative Data Systems (example: BRADS) or other appropriate system(s) necessary to update the LERG unless negotiated otherwise.
- 10.5 Neither Party shall use any Interconnection, function, facility, product, network element, or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of either Party, its affiliated companies or other connecting Telecommunications Carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence, either Party may discontinue or refuse service for so long as the other Party is violating this provision only upon written notice with 30 day cure period after notice receipt. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.
- 10.6 Each Party is solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 10.7 Upon ICG signature, ICG shall provide **SBC ILEC** with LEC's state-specific authorized and nationally recognized OCN/AECN for Interconnection.
- 10.8 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 10.9 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

End User Fraud: The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. The Parties shall not be liable to one

another for any fraud associated with the other Parties End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABS calls: calling card, collect, and third number billed calls.

- 10.10 **Billing**: Unless otherwise stated, each Party will render a monthly bill to the other for service(s) provided hereunder and as set forth in applicable Commission-ordered tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party. Remittance in full will be due within thirty (30) business days of that billing date. Interest shall apply on overdue amounts at the rate specified in Section 13, unless otherwise specified in an applicable Commission-ordered tariff. Each Party reserves the right to net delinquent amounts against amounts otherwise due the other Party.
- 10.11 **Headings**. The headings and numbering of Sections, Parts, Appendices, Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.
- 10.12 **Referenced Documents**. Unless the context shall otherwise specifically require, and subject to the Intervening Law provision in this Agreement, whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, **SBC ILEC** Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (collectively "Referenced Instrument"), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect.
- 10.13 **Tariff References**. Wherever any Commission-ordered tariff provision or rate is cited or quoted herein, it is understood that said cite encompasses any revisions or modifications to said tariff. Wherever any Commission-ordered tariff provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered that tariff. It is understood and agreed that the services and facilities to be provided by the Parties in satisfaction of this Agreement may be provided pursuant to tariffs and then current practices. Should such services and facilities be modified by tariff or by Order, including any modifications resulting from other Commission proceedings, federal court review or other judicial action, the Parties shall cooperate with one another for the purpose of incorporating required modifications, if any are deemed required, into this Agreement in accordance with Section 20 (Intervening Law) below.



## **11.0 FORCE MAJEURE**

11.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, terrorist acts, riots, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, cable cuts, power blackouts, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of nonperformance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

## **12.0 AUDITS**

12.1 Upon reasonable written notice and at its own expense, each Party or its authorized representative (providing such authorized representative does not have a conflict of interest related to other matters before one of the Parties) shall have the right to conduct an audit of the other Party in order to verify the (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) the verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Neither Party may request more than one such audit within any twelve (12) month period. This includes on-site audits at the other Party's or the Party's vendor locations. Each Party, whether or not in connection with an audit, shall maintain reasonable records for a minimum of twenty-four (24) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement. Each Party's right to access information for audit purposes is limited to data not in excess of twenty-four (24) months in age.

## **13.0 DISPUTED AMOUNTS**

13.1 If one Party disputes a billing statement issued by the other Party, the billed Party shall notify the billing Party in writing regarding the nature and the basis of the dispute within six (6) months of the statement date, or the dispute shall be waived. The Parties shall diligently work toward resolution of all billing issues.

- 13.2 If any undisputed amount due on the billing statement is not received by the billing Party on the payment due date, the billing Party may charge interest on the past due balance at a rate equal to the lesser of (1) the interest rates set forth in the Applicable State Commission-ordered access tariff or (2) one and one-half percent (1 ½ %) per month of the maximum allowable rate of interest under Applicable Law. Late payment charges shall be included on the next statement.

#### **14.0 DISPUTE RESOLUTION**

- 14.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.
- 14.2 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or Claim arising out of or relating to this Agreement or its breach. No Party may pursue any Claim unless such written notice has first been given to the other Party.
- 14.3 Except as otherwise specifically provided for in this Agreement, no Claim may be brought for any dispute arising under this Agreement more than twenty-four (24) months from the date of the occurrence that gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.
- 14.4 Informal Dispute Resolution. Upon receipt by one Party of notice of a dispute by the other Party pursuant to this Agreement, 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 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 that were 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.
- 14.5 Formal Dispute Resolution. If the Parties are unable to resolve the dispute through the informal procedure described above in Section 14.4 then either Party may invoke the formal Dispute Resolution procedures described in this Section. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be

invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 14.2 above.

- 14.6 Claims Subject to Mandatory Binding Arbitration: The following Claims, if not settled through informal Dispute Resolution, will be subject to binding arbitration pursuant to this Section:
- 14.6.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 14.2 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution, the Parties will annualize the actual numbers of months billed.
- 14.7 Claims Subject to Elective Arbitration. Claims will be subject to elective Arbitration pursuant to Section 14.9 below if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.
- 14.8 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism: a) any action seeking a temporary restraining order or injunction related to the purposes of this Agreement; b) all Claims arising under federal or state statute(s), including but not limited to, any antitrust and/or deceptive trade practices claims; and c) actions to compel compliance with this Dispute Resolution process.
- 14.9 Arbitration. Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in: Dallas, Texas (SBC-SWBT); Chicago, Illinois (SBC-AMERITECH), San Francisco, California (PACIFIC); Reno, Nevada (NEVADA), as appropriate, unless the Parties agree otherwise. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to

award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

**15.0 NOTICES**

15.1 Any notice to a Party required or permitted under this Agreement shall be in writing and shall be: (a) delivered personally; (b) delivered by express overnight delivery service; (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by facsimile; provided that a paper copy is also sent via methods (a), (b) or (c) of this Section. Notices will be deemed given as of the earliest of: the date of actual receipt; the next Business Day when sent via express overnight delivery service; five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone. Notices will be addressed to the Parties as follows:

NOTICE CONTACT	ICG Communications, Inc. CONTACT	<b><u>SBC ILEC</u></b> (s) CONTACT
NAME/TITLE	Darian Collins, Manager, Industry and Corp. Affairs	Contract Administrator
STREET ADDRESS	161 Inverness Drive West	Notices Manager
CITY, STATE, ZIP CODE	Englewood, CO 80112	311 S. Akard, 9 <sup>th</sup> Floor
TELEPHONE NUMBER	303-406-7355	Four SBC Plaza
FAX NUMBER	303-414-5817	Dallas, Texas 75202-5398

15.2 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

15.3 **NOTICE OF CHANGES**

15.3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

16.0 **PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

16.1 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 publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

16.2 Nothing this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

17.0 **CONFIDENTIALITY**

17.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data; (i) furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") dealing with customer-specific, facility-specific, or usage-specific information, other than customer information communicated for the purpose of publication or directory database inclusion, 911, call processing, billing or settlement or as otherwise mutually agreed upon; or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary" or (iii) communicated orally and declared to the Receiving Party at the time of delivery, or by written notice given to the Receiving Party within ten (10) days.

after declaration to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall be considered confidential and proprietary and remain the property of the Disclosing Party.

- 17.2 Upon request by the Disclosing Party, the Receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, or otherwise. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement.
- 17.3 Each Party shall keep all the other Party's Proprietary Information confidential in the same manner in which it keeps its own Proprietary Information confidential, and shall use the other Party's Proprietary Information only for performing the covenants contained in the Agreement and shall disclose such Proprietary Information only to those employees, contractors, agents or Affiliates who have a need to know. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.
- 17.4 Unless otherwise agreed, the obligations of confidentiality and nonuse set forth in the Agreement do not apply to such Proprietary Information that:
- (a) was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party;
  - (b) is, or becomes publicly known through no wrongful act of the Receiving Party;
  - (c) is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information;
  - (d) is independently developed by an employee, agent, or contractor of the Receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information;
  - (e) is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights;
  - (f) is approved for release by written authorization of the Disclosing Party; and
  - (g) is required to be made public by the Receiving Party pursuant to applicable law or regulation provided that the Receiving party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed

to have waived the Receiving Party's compliance with this Section 17 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

- 17.5 The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.
- 17.6 Notwithstanding any of the foregoing, SBC ILEC shall be entitled to disclose Proprietary Information on a confidential basis to regulatory agencies upon informal or formal request and SBC ILEC need not provide prior written notice of such disclosure to ICG if SBC ILEC has obtained an appropriate order for protective relief or other assurance that confidential treatment shall be accorded to such Confidential and/or Proprietary Information.
- 17.7 The Parties agree that an impending or existing violation of any provision of this Section would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages. In the event of any breach of this Section for which legal or equitable relief is sought, all reasonable attorney's fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.

## **18.0 GOVERNING LAW**

- 18.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Little Rock, Arkansas; San Francisco, California; Chicago, Illinois; Indianapolis, Indiana; Topeka, Kansas; Detroit, Michigan; St. Louis, Missouri; Reno, Nevada; Columbus, Ohio; Oklahoma City, Oklahoma; Dallas, Texas and Milwaukee, Wisconsin,] and waive any and all objection to any such venue.

## 18.2 State-Specific Rates, Terms and Conditions

18.2.1 For ease of administration, this Agreement may contain certain specified rates, terms and conditions which apply only in a designated state (“state-specific terms”). To the extent that this Agreement contains specified rates, terms and conditions which apply only in a given state, such rates, terms and conditions shall not apply and shall have no effect in any other state(s).

## 19.0 WORK PRODUCT

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

## 20.0 INTERVENING LAW

20.1 This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, on July 18, 2000, the United States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board v. FCC*, No. 96-3321, 2000 Lexis 17234, which is the subject of a pending appeal before the Supreme Court. The Parties further acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370)



(rel. November 24, 1999), which is the subject of a pending request for reconsideration and a pending appeal. The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-bound Traffic* (the "ISP Inter-carrier Compensation Order.") By executing this Agreement and carrying out the inter-carrier compensation rates, terms and conditions herein, SBC ILEC(s) does not waive any of its rights, and expressly reserves all of its rights, under the ISP Inter-carrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions and to adopt on a date specified by SBC ILEC(s) the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions. 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 decisions or proceedings or any remands thereof, including its right to seek legal review or a stay pending appeal of such decisions and its rights under this Intervening Law paragraph.

## **21.0 TAXES**

- 21.1 Each Party purchasing products or services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on or with respect to the products or services provided by or to such Party, except for any Tax on either Party's corporate existence, status, or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.
- 21.2 With respect to any purchase of services, facilities or other arrangements, if any Tax is required or permitted by applicable law 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. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

- 21.3 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; 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.
- 21.4 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.
- 21.5 If either Party is audited by a taxing authority or other Governmental Authority, 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.
- 21.6 With respect to any Tax or Tax controversy covered by this Section, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. 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.

## **22.0 NON-ASSIGNMENT**

- 22.1 Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a Third Party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prompt written notice to the other Party of such assignment or transfer. Any costs associated with

updating either Party's accounts in the other Party's systems to accept the identity or name of the new entity shall be paid by the assigning Party prior to when such assignment shall be effective. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

### **23.0 NON-WAIVER**

23.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such 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. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

### **24.0 WARRANTIES**

24.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

### **25.0 INDEMNIFICATION**

25.1 Except as otherwise provided herein, each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties and neither Party shall bear any responsibility for the service(s) and facility(ies) provided by the other Party, its agents, subcontractors, or others retained by such Parties.

- 25.2 Except as otherwise provided herein, and to the extent not prohibited by law and not otherwise controlled by tariff, each Party (the “Indemnifying Party”) shall release, defend and indemnify the other Party (the “Indemnified Party”) and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct (“Fault”) by such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party’s provision of services or functions under this Agreement, provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 25.3 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 Losses by its End Users regardless of whether the underlying service or product was provided by, or network element was provisioned by, the Indemnified Party, unless the loss was caused by the gross negligence or intentional misconduct of the Indemnified Party.
- 25.4 Each Party shall be released, indemnified, defended and held harmless by the other Party (“Indemnifying Party”) against any Loss arising from the Indemnifying Party’s use of services or elements provided under this Agreement involving:
- 25.4.1 Any Claim or Loss arising from such Indemnifying Party’s use of products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party’s or its End User’s use.
- 25.4.2 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any products or services provided pursuant to this Agreement.
- 25.4.3 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party’s or an

Indemnifying Party's End User's use of products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

25.4.3.1 where an Indemnified Party or its End User modifies products or services; provided under this Agreement; and

25.4.3.2 no infringement would have occurred without such modification.

25.4.4 This section includes, but is not limited to, suits arising from any act or omission of an End User in the course of using services or functions provided pursuant to this Agreement.

25.5 Whenever a Claim shall arise for indemnification under this Section, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall 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.

25.6 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party.

25.7 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such Claim, the Indemnified Party shall defend such Claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such Claim.

25.7.1 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

25.8 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense;

provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

- 25.9 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party 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 Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 25.10 If the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 25.11 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 25.12 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 and the relevant records of each Party shall be available to the other Party with respect to any such defense.

## **26.0 LIMITATION OF LIABILITY**

- 26.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in this Agreement, 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 a Party has charged or would have charged to the other Party for the affected Interconnection, functions, facilities, products and service(s) that were not performed or were improperly performed.

- 26.2 Except for Losses alleged or made by an End User of either Party and except as otherwise provided in specific appendices, in the case of any Loss alleged or made 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 (as mutually agreed to by the Parties) 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.
- 26.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section.
- 26.4 Except to the extent (if at all) prohibited by law or public policy, neither Party shall be liable to the other Party for any indirect, incidental, consequential, reliance, special or punitive damages suffered by the other Party (including, without limitation, damages for harm to business, loss of anticipated revenues, savings, or profits, or other economic loss suffered by such other Party), regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including without limitation negligence of any kind, whether active or passive, (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Federal Telecommunications Act or other statute) and regardless of whether the Parties knew or had been advised of the possibility that such damages could result, in connection with or arising from anything said, omitted, or done hereunder or related hereto including willful acts or omissions (collectively, "Consequential Damages"); provided that the foregoing shall not limit a Party's obligation under this Agreement to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorney's fees) and Consequential Damages of such Third Party. Except as provided in the prior sentences, each Party hereby releases and holds harmless the other Party (and such other Party's affiliates, and their respective officers, directors, employees and agents) from any such Claim.

- 26.5 ICG hereby releases **SBC ILEC** from any and all liability for damages due to errors or omissions in LEC's End User listing information as provided by ICG to **SBC ILEC** under this Agreement, including any errors or omissions occurring in ICG's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, punitive, incidental or Consequential Damages.
- 26.6 **SBC ILEC** shall not be liable to ICG, its End User's or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 26.7 This Section is not intended to exempt any Party from liability under this Agreement, but only to set forth the scope of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection and services hereunder and no different pricing reflecting different costs and different limits of liability was agreed to.

## **27.0 THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY**

- 27.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any Third-Party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

## **28.0 NO LICENSE**

- 28.1 Except as otherwise provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

## **29.0 SURVIVAL**

- 29.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement



shall survive the termination or expiration of this Agreement including but not limited to Indemnification, Limitation of Liability and Confidentiality.

### **30.0 SEVERABILITY**

30.1 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement as a total arrangement and it is intended to be nonseverable.

### **31.0 COMPLIANCE WITH LAW**

31.1 Each Party shall comply with all federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

### **32.0 LAW ENFORCEMENT**

32.1 SBC ILEC and ICG shall handle law enforcement requests as follows:

32.1.1 Intercept Devices: Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

32.1.2 Subpoenas: If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the Party was the End User's service provider, in which case the Party will respond to any valid request.

32.1.3 Emergencies: If a Party receives a request from a law enforcement agency for temporary number change, temporary disconnect, or one-way denial of outbound calls for an End User of the other Party by the receiving Party's switch, that Party will comply with an valid

emergency request. However, neither Party shall be held liable for any claims or damages arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims.

### **33.0 TERM AND TERMINATION**

33.1 FOR ALL STATES, EXCEPT OHIO: The Effective Date of this Agreement shall be ten (10) calendar days after the State 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.

FOR OHIO: Based upon Order of the PUC of Ohio, the Agreement is Effective upon filing and is deemed approved by operation of law on the 91<sup>st</sup> day after filing.] The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on March 10, 2005. ("the Term"). Thereafter, this Agreement shall continue in full force and effect unless and until terminated by one or all of the Parties as provided in this Agreement.

33.2 This Agreement may be terminated by either Party at any time whatsoever (either prior to or following expiration of the Term set forth above), for any reason whatsoever, by providing written notice of termination at least ninety (90) days in advance to the other Party.

33.3 Upon termination or expiration of this Agreement in accordance with this Section, above:

33.3.1 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and

33.3.2 Each Party shall comply with the Survival clause in this Agreement.

33.4 If upon expiration or termination the Parties are negotiating a successor agreement, during such period each Party shall continue to perform its obligations and provide the services described herein until such time as the successor agreement becomes effective. If the Parties are unable to negotiate a successor agreement within the statutory time frame set for negotiations under the Act, then either Party has the right to submit this matter to the Commission for resolution pursuant to the statutory rules for arbitration under the Act. The Parties acknowledge and agree that when the successor Agreement is deemed approved by the appropriate State Commission, the rates, terms and conditions of the successor agreement shall apply retroactively back to the effective termination date of this Agreement and the Parties shall true-up to that date all

payments made under the previous Agreement between the Parties between the effective termination date of this Agreement and the approval date of the successor Agreement. Such retroactive true-up shall be completed within ninety (90) calendar days following approval of the successor agreement (or the date it is deemed approved under Section 252(e) of the Act) by the appropriate State Commission(s).

#### **34.0 INCORPORATION BY REFERENCE**

34.1 This Agreement and every interconnection or service provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement or its appendices or attachments which are legitimately related to such Interconnection or service and all such rates, terms and conditions are incorporated by reference herein and as part of every Interconnection or service provided hereunder. The Parties agree that except for Section 17 Notices, each of the sections of this Agreement are legitimately related to and applicable to each Interconnection or service provided hereunder.

#### **35.0 RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR**

35.1 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 and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or Workers' Compensation Act and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

35.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**36.0 MULTIPLE COUNTERPARTS**

36.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**37.0 SUBCONTRACTORS**

37.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, 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.

37.2 Each Party will be solely responsible for payments due that Party's subcontractors.

37.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

37.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, network elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

37.5 Any subcontractor that gains access to CPNI or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

**38.0 AMENDMENTS AND MODIFICATIONS**

38.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.

38.2 Neither Party shall be bound by any terms additional to or different from those in this Agreement that may appear in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications of any type.

### **39.0 FILING**

39.1 Unless otherwise agreed, if the designated Party fails to file this Agreement with the appropriate State commission within sixty (60) days of both Parties signatures, then this signed Agreement is null and no longer valid. In such event, the designated Party may not file this signed Agreement for approval unless it obtains the express written permission of the other Party. If the other Party objects to the filing of this signed Agreement following the expiration of the sixty (60) days referenced above, then either Party may initiate negotiations for a successor agreement under Section 251/252 of the Act. If negotiations are commenced by either Party, then the Parties will determine what rates, terms and conditions, if any, will apply until such time as a successor agreement is reached. In any event, upon approval of the successor agreement by the appropriate State commission, the rates, terms and conditions of such successor agreement shall retroactively apply back to the expiration and/or effective termination date of the last State commission approved agreement between the Parties or the effective date of any interim agreement entered into between the Parties, whichever is earlier.

### **40.0 ENTIRE AGREEMENT**

40.1 The rates, terms, and conditions contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties pre-dating the execution of this Agreement; provided, however, that none of the rates, terms or conditions of this Agreement shall be construed to apply in any manner to any period prior to the termination and/or expiration date of any agreement that this Agreement replaces. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

### **41.0 AUTHORITY**

41.1 Each of the **SBC ILEC**(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the **SBC ILEC**(s) for which this Agreement is executed represents and warrants that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for that **SBC ILEC**. Each of the **SBC ILEC**(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

- 41.2 ICG represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Arkansas, California Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Texas and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. ICG represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.
- 41.3 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.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement through their duly authorized representatives.

ICG Communications, Inc.

Illinois Bell Telephone, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin  
by SBC Telecommunications, Inc.  
its authorized agent

BY: \_\_\_\_\_

(Signature)

NAME: Michael D. Kallet

(Printed)

TITLE: EVP of Operations

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature)

NAME: \_\_\_\_\_

(Printed)

TITLE: <sup>for/</sup>President Industry Markets

DATE: \_\_\_\_\_