

REMAND ORDER EMBEDDED BASE TEMPORARY RIDER

This is a Remand Order Embedded Base Temporary Rider (the "Embedded Base Rider") to the Interconnection Agreement by and between one or more of the SBC Communications Inc. owned ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, ("SBC" or "SBC ILEC") and CLEC (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act, and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 ("*TRO Remand Order*"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS" or access to certain high-capacity loop and certain dedicated transport on an unbundled basis to CLECs; and

WHEREAS, the FCC, in its *TRO Remand Order*, instituted transition periods and pricing to apply to CLEC's embedded base of the affected elements; and

WHEREAS, as of the date the parties executed the Agreement to which this Temporary Rider is attached, CLEC has an embedded base of one or more of the affected elements, and the transition periods applicable to one or more of the elements had not yet expired;

NOW, THEREFORE, the Parties attach the following temporary terms and conditions to the Agreement to apply only to the embedded base of the affected elements, as set forth below:

¹ Order on Remand, *Unbundled Access to Network Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

1. TRO Remand-Declassified Loop-Transport Elements. Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

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

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

- 1.1 Transitional Provision of Embedded Base. As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, SBC MISSOURI shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:

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

SBC MISSOURI's transitional provision of embedded base Affected Element(s) under this Section 1.1 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, SBC MISSOURI may, without further notice or liability, cease providing the Affected Element(s).

- 1.2 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Loop-Transport Element(s), *plus 15%*.

- 1.2.1 Regardless of the execution or effective date of this Embedded Base Rider or the underlying Agreement, CLEC will be liable to pay the Transitional Pricing for all Affected Loop-Transport Element(s), beginning March 11, 2005.

regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Embedded Base Rider) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*") and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"); the FCC's 2003 Triennial Review Order and 2005 Triennial Review Remand Order; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

5. Except to the extent of the very limited purposes and time periods set forth in this Embedded Base Rider, this Embedded Base Rider, does not, in any way, extend the rates, terms or conditions of the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] beyond its term.
6. In all states other than Ohio, the Parties acknowledge and agree that this Embedded Base Rider shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this Embedded Base Rider under Section 252(e) of the Act or, absent such state commission approval, the date this Embedded Base Rider is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Embedded Base Rider shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Embedded Base Rider shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

IN WITNESS WHEREOF, this Embedded Base Rider to the Agreement was exchanged in triplicate on this _____ day of _____, 2005, by the Parties, signing by and through their duly authorized representatives

CLEC NAME

SBC Operations, Inc., authorized agent for SBC Missouri

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: _____
For/ Senior Vice President -
Industry Markets and Diversified Businesses

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____