ATTACHMENT A

SBC - SAGE TELECOM AGREEMENT

PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

between

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;
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/or SBC Texas;
Wisconsin Bell, Inc. d/b/a SBC Wisconsin

And

SAGE TELECOM, INC.; SAGE TELECOM OF TEXAS, L.P.

REDACTED

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PRIVATE COMMERCIAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

This Agreement is entered into by and between SAGE TELECOM, INC. and SAGE Telecom of Texas, L.P. (hereinafter collectively referred to as "SAGE"), and **SBC-13STATE** (as defined herein) (collectively, the "Parties").

WHEREAS, both incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") have been and continue to be subject to significant regulatory and business uncertainties and risks due, in part, to the continuous and laborious cycle of regulatory orders and order- vacating appeals, as has been illustrated with regard to unbundling obligations of ILECs as defined in recent FCC orders under 47 U.S.C. § 251(d)(2), and in the recent decision in USTA v. FCC, No. 00-1012 (U.S.D.C. App. March 2, 2004);

WHEREAS, both Parties wish to enter into a business-to-business relationship on certain matters outside of 47 U.S.C. §§ 251 and 252, in order to minimize those uncertainties and risks;

WHEREAS, both Parties wish to afford consumers the benefits of competition in telecommunications services, including the benefits of technology and service innovation from multiple participants;

WHEREAS, SAGE operates as a retail local exchange service provider in areas where **SBC-13STATE** is the ILEC, and wishes to obtain certain technology packages, operational support capabilities, and certain ancillary services from **SBC-13STATE** as SAGE's preferred network provider in order for SAGE to provide local exchange service;

WHEREAS, **SBC-13STATE** wishes to provide such technology packages, operational support capabilities, and certain ancillary services to SAGE on a wholesale basis, as part of a business-to-business agreement, at prices that are reasonable as determined by voluntary negotiation between the Parties, and on terms that are protective both of the reliability and integrity of **SBC-13STATE**'s network and systems, and also of **SBC-13STATE**'s own ability and economic incentives to provide technology and service innovation to the marketplace;

WHEREAS, both Parties wish to foster efficiencies in their operational interactions associated with the wholesale arrangement, such as order-entry, installation, change orders, maintenance-dispatch, provisioning and transfer of Call Detail Records ("CDRs");

WHEREAS, the Parties agree that maximizing the percentage of inter-company activity that can be fully automated is essential for reducing Operations Costs,

WHEREAS, both Parties recognize that excessive Churn (as defined herein) materially detracts from the economic value available to both participants in the wholesale arrangement, making it more difficult at any given level of wholesale prices for both Parties to optimize their wholesale business relationship;

WHEREAS, each Party wishes to operate separately from the other some of its service offerings and systems involved in services at the retail level, as well as certain other systems involving proprietary technology or software applications, and to keep these systems for the private use of its own retail customers;

[** REDACTED **]

[** REDACTED **]

[** REDACTED **]

[** REDACTED **]

[** REDACTED **]

WHEREAS, in reducing its risk in the current regulatory and litigation environment, and in creating a voluntary business relationship it has determined to be reasonable and beneficial, each Party recognizes there is a real opportunity for an historic agreement; and

WHEREAS, both Parties are willing to agree only on the basis of the entirety of this Private Commercial Agreement being an indivisible whole.

NOW, THEREFORE, the Parties agree by these presents:

1. INTRODUCTION

1.1 The Parties understand and agree that this Agreement sets forth the terms and conditions, including prices, under which **SBC-13STATE** will make available to SAGE "Local Wholesale Complete" or "LWC" within **SBC-13STATE**'s Service Areas, and under which SAGE agrees to purchase all of its requirements for Basic Analog Switching (or a similar circuit switching capability) and/or Basic Analog Loops (or a similar transmission capability) to provide local exchange telecommunications services to Eligible End Users (as defined herein) within those same Service Areas.

1.2 The LWC product refers to technology packages, operational support capabilities, and certain ancillary services comprising dial tone capabilities using Basic Analog Switching (as defined herein) cross-connected to a Basic Analog Loop (as defined herein), in conjunction with other network capabilities, provided by **SBC-13STATE**. Both the Basic Analog Switching and Basic Analog Loop are integral and mandatory parts of LWC, and must be provisioned for each LWC; otherwise, LWC is not available to SAGE.

1.3 For the Term (as defined herein) SAGE agrees to use LWC, where and to the extent available, to fulfill all of its retail and wholesale requirements in the provision of wireline local exchange service to Eligible End Users using Basic Analog Switching (or a similar circuit switching capability) and/or Basic Analog Loops (or a similar transmission capability) within the **SBC-13STATE** Service Areas. By way of example, the foregoing requirements commitment is in lieu of SAGE providing circuit-switched, basic analog local exchange service by using the so-called "Unbundled Network Element Platform" (or "UNE-P"), any Commingled Arrangement involving **SBC-13STATE**, any resold **SBC-13STATE** service, any 47 U.S.C. § 271 checklist offering made by **SBC-13STATE**, any SAGE-provisioned Basic Analog Switching (or a similar circuit switching capability) or any wholesale service/offering using Basic Analog Switching (or a similar circuit switching capability) provided by any non-**SBC-13STATE** entity. Additionally, SAGE agrees that it will not permit any Affiliate to use LWC, except through the process set forth in Section 1.3.3.

1.3.1 SAGE hereby irrevocably waives any right to purchase, directly or indirectly, any **SBC-13STATE**-provided unbundled switching, or any **SBC-13STATE** local switching under 47 U.S.C. § 271, and SAGE shall not use, request, order, or otherwise authorize or permit the use of any **SBC-13STATE**-provided unbundled switching or any **SBC-13STATE** local switching under 47 U.S.C. § 271. The foregoing waiver includes any rights it may have in any of the current interconnection agreements (ICAs) or any future interconnection agreement(s), including but not limited to any amendments to either, as well as Sage's rights, and **SBC-13STATE**'s obligations, under 47 U.S.C. § 252(i).

1.3.2 SAGE represents that all of its Affiliates that are engaged in local dialtone services (e.g., wireline local exchange service) in **SBC-13STATE** Service Areas as of the Effective Date of this Agreement are Parties to this Agreement, and are individually and collectively referred to herein as SAGE.

1.3.3 If, during the Term, of this Agreement, SAGE acquires, is acquired by, merges with or otherwise becomes an Affiliate of any person or entity that provides retail or wholesale wireline local exchange service to end users who are considered "Eligible End Users" under this Agreement using Basic Analog Switching (or a similar circuit switching capability) within the **SBC-13STATE** Service Areas, including without limitation by purchasing, directly or indirectly, any **SBC-13STATE**-provided unbundled switching resembling Basic Analog Switching, and/or any **SBC-13STATE** local switching under 47 U.S.C. § 271 resembling Basic Analog Switching, then, within 120 days of becoming the Affiliate of such person or entity, SAGE will notify **SBC-13STATE** to treat all such switching and loop arrangements of such person or entity which resemble LWC in one of two ways: (i) the switching arrangements are to be converted or migrated to LWC and such person or entity, as a new Affiliate, is incorporated into the full terms of this Agreement; or (ii) the switching arrangements are to be disconnected. Unless the Parties otherwise agree, such conversion, migration, or disconnection shall be completed within 90 days of such SAGE notice. If not completed within 90 days, **SBC-13STATE** may begin on the 91st day applying the then-applicable LWC rates to any remaining basic analog switching with loop arrangements being provided by **SBC-13STATE** and, for any other remaining switching arrangements, the next to the last sentence of this Section 1.3.3 shall be triggered. In addition, the ICA(s) of such Affiliate are to be amended similarly to those of SAGE

pursuant to this Agreement. If these conditions are not met, and the conversion, migration, or disconnection of the Affiliate serving arrangements using capabilities resembling Basic Analog Switching does not take place as described, then the provisions of Section 1.3 are deemed to be in a condition of material breach, and the procedures of Section 18.5 may be put into effect. Conversions, migrations, and disconnects pursuant to this Section are not to be included in calculations of Flow Through and Churn.

1.3.4 The failure to abide by this Section 1.3 shall be deemed a material breach of this Agreement, except in any State, if any, where this Agreement has been terminated.

1.4 For the Term, SAGE agrees to (i) a rate for an unbundled 2-wire analog loop (or a facility that is being used to provide the equivalent transmission capacity) equal to those prices noted in the LWC Pricing Schedule (which pricing and commitment shall be included in the Related ICA Amendments); (ii) purchase no fewer than 450,000 LWCALs in each month ("Monthly Minimum"); and (iii) use LWC to meet a Local Ratio of 95% for each Measurement Period during the effectiveness of the Agreement. The "Local Ratio" is defined to be the ratio of the aggregate billing for LWC in a "Measurement Period" (as set forth in Section 7.4) ("LWC Period Total") over the sum of the LWC Period Total and the aggregate billing under the then-applicable interconnection agreement(s) between SAGE and **SBC-13STATE** (excluding any billing for telecommunications services resold pursuant to 47 U.S.C. § 251(c)(4)). The calculation of "Local Ratio" shall not include switching and loop arrangements to be converted, migrated, or disconnected pursuant to the provisions of Section 1.3.3 until the first full Measurement Period following after the 90–day conversion/migration/disconnection period has expired. Any switching and loop arrangements that may not yet be converted to LWC, but to which LWC rates have been applied pursuant to 1.3.3, shall be treated as LWC for the purposes of calculating the Local Ratio.

1.4.1 In the event that SAGE fails to meet the Local Ratio in any Measurement Period, it may avoid being in the material breach of this Agreement by electing one of the following:

1.4.1.1 SAGE shall pay **SBC-13STATE** an amount equal to the amount that the non-resale ICA billing exceeds 5% of the Measurement Period's LWC Period Total, SAGE would have met the Local Ratio, unless the Parties mutually agree to an alternative remedy. By way of illustration, if in a Measurement Period SAGE's LWC Period Total was $9200 and the non-resale billing under SAGE's then-applicable ICAs was $800, SAGE would pay $300 to **SBC-13STATE**.; or

1.4.1.2 the LWCAL Base Rate shall be increased for the following Application Period (as set forth in Section 7.4) such that the lump sum is sought to be recovered during that Application Period, based upon the number of LWCALs being purchased by SAGE at the end of that Measurement Period. By way of illustration, if in a Measurement Period SAGE's LWC Period Total was $9200, the non-resale billing under SAGE's then-applicable ICAs was $800, and at the end of that same Measurement Period the number of LWCALs in service was 500, the LWCAL base price would increase by $0.20 [$300/500 times 1/3] for the following Application Period.

1.4.2 In the event that Section 1.3.3 is triggered and such new SAGE Affiliate converts or migrates its switching arrangements pursuant to 1.3.3(i), the Monthly Minimum will be reset at the end of the sixth month following the month in which the new relationship giving rise to the Affiliate status was formed, to 75% of the LWCALs purchased that sixth month by SAGE and the new Affiliate(s).

1.5 For the Term, and except as may be subsequently and expressly agreed in writing, SAGE hereby irrevocably waives any right to Commingle any LWCALs, and shall not request, order, authorize, or otherwise permit any LWCAL it purchases to be Commingled. The foregoing waiver includes any rights it may have in any of the current interconnection agreements (ICAs) or any future interconnection agreement(s), including but not limited to any amendments to either, of SAGE and/or its Affiliates.

1.5.1 "Commingling" means, in this context, the connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to LWC or the combining of a UNE, or a combination of UNEs, with LWC. "Commingle" means the act of commingling.

1.5.2 "Commingled Arrangement" means the arrangement created by Commingling.

1.5.3 The foregoing shall not prejudice either Party's position on the issue of whether LWC constitutes facilities or services that SAGE has obtained at wholesale from **SBC-13STATE**, or whether the FCC's definition of "commingling" found at 47 CFR § 51.5 and/or the "commingling" obligations set forth in 47 CFR § 51.309 or any FCC order applies to LWC.

1.6 This Agreement includes certain Appendices and Schedules, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

1.7 This Agreement shall apply between the Parties, and each Party shall be bound to its provisions, in each and every **SBC-13STATE** State.

1.8 LWC is available only where capabilities and facilities exist.

1.9 The facilities used by **SBC-13STATE** to provide LWC shall remain the property of **SBC-13STATE**.

1.10 Except for the Service Assurance Plan (see Section 3.1.8 hereof), the Parties understand and agree that no performance measures and remedies shall apply under this Agreement.

1.11 The Parties acknowledge and agree that this Agreement, in whole or in part, is not subject to Sections 251/252 of the Act, and is, and was, not subject to negotiation and/or arbitration under Sections 251 and/or 252 of the Act.

2. DEFINITIONS

As used in this Agreement, the following terms and phrases shall have the assigned meaning.

2.1 "**Act**" means the federal Communications Act of 1934, as amended, including by the Telecommunications Act of 1996.

2.2 "**Affiliate**" shall be a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

2.3 "**Basic Analog Switching**" refers to a circuit-switched, line-side, analog or TDM switch connection [** REDACTED **] used primarily for switched voice and voice-band data communications, subject to Section 6, Technology Evolution. Expressly excluded from the scope and definition of Basic Analog Switching are Centrex, Centrex-like (and any similar), PBX, payphone (coin), and I/O features/functions/ capabilities, as well as trunk ports and DS-1 (and higher capacity) ports used other than as a multiplexing of Basic Analog Loops.

2.4 "**Basic Analog Loop**" refers to a transmission facility connecting a distribution frame (or its equivalent) in an **SBC-13STATE** central office and the loop demarcation point at an Eligible End User's premises, which has an appearance of a 2-Wire analog transmission facility [** REDACTED **]

2.5 "**Business Day**" means Monday through Friday, excluding holidays on which the applicable **SBC-13STATE** ILEC does not provision new orders for retail telecommunications services. The use of only "day" in this Agreement refers to a calendar day.

2.6 "**Churn**" means the fraction, represented as a percentage, whose numerator is equal to the number of SAGE's LWCALs that SAGE disconnects or receives an accurate line loss notification during a month, and whose denominator is equal to the sum of the number of lines in service on the first day of the month plus the number of new lines added during the course of that month.

2.7 "**Control**" (including the terms "**controlling**", "**controlled by**" and "**under common control with**") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

For purposes of this Agreement and this definition, "control" shall be deemed to exist if a person or entity owns an equity interest (or the equivalent thereof) or a voting interest of more than 50 percent.

2.8 [** REDACTED **]

2.9 "**Electronic Service Order**" means an electronic service order sent to **SBC-13STATE** over a standard, computerized **SBC-13STATE** service order interface such as EDI or LEX.

2.10 "**Extended Area Service Traffic**" is traffic exchanged subject to a mandatory local calling area arrangement ordered by the applicable state commission that provides an end user(s) a local calling area beyond their basic local exchange serving area.

2.11 "**Flow Through**" is the percentage of Electronic Service Orders in the relevant time period that are completed without manual intervention by **SBC-13STATE** due to SAGE system limitations or order errors.

2.12 "**Foreign**" refers to networks or technologies that are outside the **SBC-13STATE** networks, and which are allowed to interact with **SBC-13STATE** only in accordance with approved protocols and/or procedures.

2.13 "**Intellectual Property**" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.

2.14 "**IntraLATA Toll**" is defined as traffic between one **SBC-13STATE**'s local calling area to another **SBC-13STATE**'s local calling area within one LATA within the respective state.

2.15 "**ISP-Bound Traffic**" is traffic that is originated by an end user(s) of one Party and terminated to an ISP serviced by the other Party that are (i) both physically located within the same **SBC-13STATE**'s Local Exchange Areas as defined by the **SBC-13STATE's** respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.

2.16 [** REDACTED **]

2.17 "**Local Wholesale Complete**" ("**LWC**") refers collectively to the technology packages, operational support capabilities, and certain ancillary services supporting the provision of local exchange service that are offered by **SBC-13STATE** under this Agreement.

2.18 [** REDACTED **]

2.19 "**LWC Access Line**" ("**LWCAL**") refers to an individual technology package offered by **SBC-13STATE** which includes a Basic Analog Loop connected with Basic Analog Switching, equipped so that SAGE can provide local exchange dialtone service to a particular LWC End User premises, and is otherwise operational in accordance with the provisions of this Agreement.

2.20 "**Measurement Period Churn**" means the simple average of the Churn for the months in that Measurement Period (as defined in Section 7.4).

2.21 "**Operations Costs**" refers to the costs borne by both Parties of the wholesale arrangement related to intercompany wholesale operations functions such as order entry, installation, change orders, maintenance-dispatch, provisioning and transfer of Call Detail Records ("CDRs") for billing purposes.

2.22 "**Optional Extended Area Service Traffic**" is traffic exchanged subject to an optional local calling area arrangement that permits an end user(s) to choose a local calling area beyond their basic local exchange service area if such end user(s) pays an additional fee.

2.23 "**SBC Communications Inc.**" or "**SBC**" means the holding company which directly or indirectly owns the following 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/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

2.24 "**SBC CALIFORNIA**" means Pacific Bell Telephone Company d/b/a SBC California.

2.25 "**SBC CONNECTICUT**" - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.

2.26 "**SBC MIDWEST REGION 5-STATE**" - As used herein, **SBC MIDWEST REGION 5-STATE** means 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, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

2.27 "**SBC NEVADA**" means Nevada Bell Telephone Company d/b/a SBC Nevada.

2.28 "**SBC OKLAHOMA**" means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma.

2.29 "**SBC SOUTHWEST REGION 5-STATE**" means SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas.

2.30 "**SBC-2STATE**" means **SBC CALIFORNIA** and **SBC NEVADA**.

2.31 "**SBC-8STATE**" - As used herein, **SBC-8STATE** means **SBC SOUTHWEST REGION 5-STATE**, **SBC CALIFORNIA**, **SBC NEVADA**, and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas.

2.32 "**SBC-10STATE**" means **SBC SOUTHWEST REGION 5-STATE**, SBC Illinois, SBC Indiana, SBC Michigan, SBC Ohio and/or SBC Wisconsin.

2.33 "**SBC-13STATE**" means **SBC-2STATE**, **SBC SOUTHWEST REGION 5-STATE**, SBC Connecticut, SBC Illinois, SBC Indiana, SBC Michigan, SBC Ohio and/or SBC Wisconsin.

2.34 "**Local Traffic**" is telecommunications traffic that is originated by an end user of one Party and terminated to the end user of the other Party that are (i) both physically located within the same **SBC-13STATE**'s Local Exchange Areas as defined by the **SBC-13STATE**'s respective state Local (or General) Exchange Tariff or (ii) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area.

2.35 "**Service Area**" means a geographic area in which **SBC-13STATE** then serves as the incumbent local exchange carrier.

2.36 **"TDM"** refers to the channelization of digitized voice grade circuits into DS-1 and higher speed transmission signals using time division multiplexing. TDM is used in circuit switching.

2.37 "**UNE**" means an unbundled network element. UNEs are not provided under this Agreement.

3. APPENDICES INCORPORATED BY REFERENCE

3.1 Included as integral parts of this Agreement are the following listed appendices, which are attached and incorporated by this reference:

3.1.1 800 Database

3.1.2 ABS

3.1.3 LIDB-CNAM / LIDB-AS

3.1.4 OSS

3.1.5 E911/Emergency Services

3.1.6 Basic Analog Switching and Non-Dedicated Transport

3.1.7 Message Recording (DUF)

3.1.8 Service Assurance Plan

3.1.9 Operator Services and Directory Assistance

4. LWC DESCRIPTION

4.1 LWC is only available to SAGE for use in providing local exchange telecommunications service to its residential and business and government end users ("Eligible End Users") except where, and only to the extent that, SAGE is required to resell its services under state or federal law. If an Eligible End User is a telecommunications carrier (including SAGE itself) or an enhanced service provider (including Internet service providers), then such Eligible End User will provide written certification to SAGE, with a copy available for **SBC-13STATE**, that it is using such service exclusively for administrative purposes, and not as an element of any fee-based service offering to its own customers. In no event shall the aggregate LWCALs used by SAGE to provide service to telecommunications carriers (including SAGE itself) and to enhanced service providers exceed 250 LWCALs in any month. Eligible End Users being served by SAGE using LWC are referred to herein as "LWC End Users."

4.1.1 The definition of "Eligible End User" excludes those end users that are served by a DS-1 or higher capacity loop at a single location, and those end users that are being served by SAGE at a single location by 5 or more lower capacity loops (i.e., lower than DS-1), provided, however, that any Sage local exchange service end user customer who would otherwise qualify as an Eligible End User except for the fact that, as of the Effective Date, such End User is being served by SAGE through the use of 5 or more of such lower capacity loops, shall be allowed to convert to LWC at the location and at the number of LWCAL-equivalents. LWC is not available to serve those excluded end users, and SAGE shall not use LWC to serve those excluded end users.

4.1.2 LWC may not be used for termination of "pass through" or transit access traffic if such use results in an arrangement that seeks to avoid the appropriate application of switched access charges.

4.2 Each LWCAL includes the following:

4.2.1 A Basic Analog Loop connected with Basic Analog Switching.

4.2.2 A single NANP telephone number (i.e., NPA-NXX-XXXX) assigned to it, which shall be one either associated with the SBC-13STATE Serving Switch (as defined herein) per the Telcordia LERG (Local Exchange Routing Guide), or ported to the Serving Switch as permitted under local number portability ("LWC Number").

4.2.3 One white page directory listing for the LWC Number, inclusion of the LWC Number in **SBC-13STATE**'s Operator Services and Directory Assistance databases, and delivery of appropriate number of Directories to each LWC End User according to **SBC-13STATE** practices for its own customers in the serving area. See also Operator Services and Directory Assistance Appendix.

4.2.3.1 Additional, foreign, enhanced, non-published, non-listed, and other special white page listings are available at the price set forth in LCW Pricing Schedule .

4.2.4 Use of non-dedicated transport for calls originated from the LWCAL that terminate within the local calling scope, any mandatory and optional extended area service calling scope(s) (one-way or two-way), and "1+" intraLATA toll calling scope. All of the foregoing calling scopes shall be determined with respect to **SBC-13STATE**'s retail telecommunications service offerings, the premises of the LWC End User, and the serving **SBC-13STATE** end office switch providing the Basic Analog Switching used to serve the LWC End User ("Serving Switch").

4.2.5 Use of non-dedicated transport for intraLATA and interLATA toll calls terminated to or originating from the LWCAL, for those toll calls that are handed off between **SBC-13STATE** and a third party carrier at a point other than the LWCAL's Serving Switch.

4.2.6 Use of those vertical features, CLASS features, line class codes that are being used, as of the Effective Date, by SAGE to provide mandatory and optional calling scope plans on a retail basis, and other features, functions, and capabilities Loaded and Activated from the switch-vendor-provided software of the Serving Switch for use with Basic Analog Switching. "Loaded" means that it is

included in the software installed in the Serving Switch. "Activated" means that the licensing fees are current; that no further license, right to use, or other fee needs to be paid to, and no enabling code or other mechanism or method needs to be obtained from a third party; and that translations and USOCs for use with LWC are in place such that ordering, billing and provisioning wholesale processes have been implemented. The Phase II implementation shall not negatively affect the availability of any Basic Analog Switching feature, line class code, function or capability that was Loaded and Activated prior to that implementation, and which were previously available to SAGE under this Agreement. Specifically excluded from the foregoing are other line class codes and any features, functions, or capabilities specifically developed by or on behalf of **SBC-13STATE** that it wishes to reserve exclusively for its use (e.g., "Toll Saver"). [** REDACTED **]

4.2.6.1 In the event that **SBC-13STATE** plans to cease offering, on a retail basis, a calling scope that is supported by a line class code(s) available to SAGE hereunder, **SBC-13STATE** shall provide written notice to SAGE within 30 days after **SBC-13STATE**'s public announcement regarding the planned retail offering. SAGE shall provide **SBC-13STATE** with written notice no later than the 60th day after receipt of whether SAGE wishes to continue to use the supporting line class code(s), and the Parties shall engage in good faith negotiations over the additional terms and conditions, including charges, with respect to SAGE's continued use and **SBC-13STATE**'s continued maintenance of the supporting line class code(s).

4.2.6.2 SAGE may continue to use, and **SBC OKLAHOMA** agrees to maintain, the SBC Oklahoma "Local Plus"® line class codes ("OKLCCs"), which provide for the capability of providing an optional one-way, outward, extended area calling to other customers in **SBC OKLAHOMA** exchanges that are located within the same LATA where the **SBC OKLAHOMA** switch providing Basic Analog Switching for an LWCAL on which an OKLCC is present, is located. Calls included in this plan are dialed using a seven-digit or ten-digit dialing pattern. SAGE agrees to pay a monthly recurring charge of $1.00 for each month or partial month that an LWCAL has a OKLCC present. **SBC OKLAHOMA** agrees to maintain the OKLCCs in all **SBC OKLAHOMA** circuit end office switches that provide LWC and from which **SBC OKLAHOMA** previously made "Local Plus"® available. **SBC OKLAHOMA**'s maintenance includes making changes to the OKLCCs on a switch-by-switch basis when NPA splits or NPA overlays occur, and making changes to the OKLCCs on a switch-by-switch basis when a new NPA-NXX is added or removed from a "Local Plus" ® calling area. The dialing pattern will be maintained so that originating calls that are to be terminated within a "Local Plus" ® calling area will have the same dialing pattern as existed as of September 15th, 2003.

4.2.7 Use of SS7, CNAM, LIDB, E911, and 800 as required for originating calls from, or terminating calls to, a LWCAL, and for such other purposes to which the Parties agree [** REDACTED **]. See also 800 Database, LIDB-CNAM/LIDB-AS, and E911/Emergency Services Appendices hereof.

4.2.8 Use of **SBC-13STATE**'s call routing tables in the Serving Switch for calls originating from the LWC Number in the same manner as calls from **SBC-13STATE** retail/resale service from that same Serving Switch are routed (local, intraLATA toll, transiting to other telecommunications carriers, transport to IXC POPs).

4.2.9 A daily usage feed containing usage records to facilitate billing and intercarrier compensation. Also see Message Recording (DUF) Appendix hereof.

4.2.10 911/E911 record administration and maintenance. Also see E911/Emergency Services Appendix hereof.

5. SCOPE; INTEGRATED OFFERING

5.1 This Agreement is applicable to and binding upon both Parties in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, or Connecticut, and only applies within the Service Areas. Should **SBC-13STATE** acquire, be acquired by, merge with or

become an Affiliate of persons or entities representing additional ILEC territories in additional states, within 120 days of becoming the Affiliate of such person or entity, **SBC-13STATE** will notify Sage either: (i) that **SBC-13STATE** is willing to negotiate in good faith over the provision of LWC by those persons or entities under the same or substantially similar terms and conditions as set forth in this Agreement, or (ii) that those persons or entities will not provide LWC. If (ii) applies, or if (i) applies and the Parties are unable to negotiate a mutually acceptable arrangement within 90 days of receipt by Sage of the notice, then Sage may at its option terminate this Agreement by providing six (6) months' written notice to **SBC-13STATE**, which notice must be sent to **SBC-13STATE** no later than the 270th day of the initial **SBC-13STATE** notice sent under this Section.

5.2 Consistent with Section 8.1, SAGE and **SBC-13STATE** shall work cooperatively to implement the transition to LWC from the other serving arrangements that SAGE may have in any **SBC-13STATE** Service Area, including UNE-P and resold **SBC-13STATE** retail local exchange services.

5.3 **SBC-13STATE** and SAGE understand and agree that:

5.3.1 this Agreement, including LWC is offered as a complete, integrated, non-severable packaged offering only;

5.3.2 the provisions of this Agreement have been negotiated as part of an entire, indivisible agreement and integrated with each other in such a manner that each provision is material to every other provision;

5.3.3 that each and every term and condition, including pricing, of this Agreement is conditioned on, and in consideration for, every other term and condition, including pricing, in this Agreement. The Parties agree that they would not have agreed to this Agreement except for the fact that it was entered into on a 13-State basis and included the totality of terms and conditions, including pricing, listed herein;

5.3.4 that **SBC-13STATE** would not provide LWC but for the Parties' mutual agreement on each and every provision of this Agreement being integrated, non-severable, and indivisible in its entirety; and

5.3.5 that neither SAGE nor **SBC-13STATE** will be entitled to substitutions and/or modifications to the packaged contractual and network offerings based upon agreements either Party may enter into with third parties (e.g., no "picking and choosing" of selective terms and conditions), except as described in Section 12, Most Favorable Treatment.

5.4 In entering into this Agreement, each Party agrees to abide by and honor the terms and conditions, including pricing, set forth in this Agreement without challenging its provisions, and that it shall not take any position(s) that is inconsistent with the provisions set forth in this Agreement for so long as this Agreement remains in effect between the Parties. In particular, SAGE agrees that it shall not seek and/or otherwise initiate, participate (voluntarily) and/or intervene in any pending or future state or federal regulatory, judicial or legislative proceeding relating or applicable to, or which would reasonably be expected to affect, the LWC product including, without limitation, any docket or proceeding that require(d) that the **SBC-13STATE** ILEC(s) make available LWC (or a similar offering) at prices different than those in this Agreement (e.g., TELRIC rates), for so long as this Agreement remains in effect. On or before the Effective Date, or as soon as is practicable, SAGE shall dismiss and/or withdraw from any pending proceeding(s), if any, within the scope of and consistent with the foregoing. Nothing contained herein shall preclude SAGE from membership in any association or organization that itself takes actions inconsistent with this subsection 5.4 so long as such organizations do not represent that the position is supported by SAGE Telecom. SAGE shall require that such organizations affirmatively acknowledge that such organizations are not representing SAGE Telecom for any matters that SAGE could not otherwise participate in under this Agreement. Nothing contained herein shall preclude SAGE from taking any position with respect to the obligations of ILEC(s) that are not affiliates of SBC 13-STATE.

5.5 The Parties have concurrently negotiated an ICA amendment(s) to effectuate certain provisions of this Agreement ("Related ICA Amendments"). The Related ICA Amendments provides for, among other things, the deletion of certain unbundled local switching with shared transport offerings, changes to unbundled analog loop rates, and waiver of certain of SAGE's statutory rights under 47 U.S.C.§ 252(i) and of **SBC-**

13STATE's obligations under 47 U.S.C. §§ 251 and 252. The Related ICA Amendments shall be executed by authorized representatives of each Party, and filed with the appropriate State commissions for approval under Sections 251/252 of the Act.

5.6 Each Party and its Affiliates shall support and defend the reasonableness of this Agreement and the Related ICA Amendments, including their respective substantive terms and conditions and the commercial nature of the Agreement, publicly and before and with any federal or state governmental entity (including any regulatory agency, court, or legislature and the representatives of each) and regardless of the location, nature, or status of the forum or proceeding. Included within the foregoing is the obligation of each Party and its Affiliates to support and defend the indivisible nature of this Agreement and Related ICA Amendments, including against any attempts that could result in treatment contrary to Section 5.4.

5.6.1 Each Party and its Affiliates agree and acknowledge that this Agreement should not voluntarily be made publicly available, including that it should not voluntarily be filed with or made available to any federal or state governmental entity (including any regulatory agency, court, or legislature and the representatives of each). The Parties understand and agree that in the event that a Party or any of its Affiliates ("Disclosing Party") is ordered, directed, or otherwise required to file this Agreement with any federal or state governmental entity, the Disclosing Party shall take any and all reasonable actions to obtain confidential treatment to avoid public disclosure of this Agreement (including, by way of example, seeking relief from the filing requirement, claiming any available exemptions from federal or state "freedom of information" laws, seeking a protective/confidentiality order, and/or redacting pricing information). In addition, the Disclosing Party must provide the other Party with written notice of the situation as soon as possible, and both Parties shall work together consistent with this Section and in the efforts of seeking, supporting, and defending the confidential nature of this Agreement. Notwithstanding the foregoing, both Parties acknowledge and agree that this Section 5.6.1 shall not prevent either Party from complying with applicable law.

5.7 SAGE and its Affiliates further agree not to seek in any regulatory, judicial or legislative proceeding the right to directly or indirectly purchase, or the obligation on SBC-13STATE to directly or indirectly provide, any SBC-13STATE-provided unbundled switching or any SBC-13STATE local switching under 47 U.S.C. § 271, including but not limited to any attempt to seek such obligation imposed upon SBC-13STATE in any proceeding involving SBC-13STATE's Affiliate's acquisition of AT&T Wireless. The failure to abide by this Section shall be deemed a material breach of this Agreement, except in any State, if any, where this Agreement has been terminated.

6. TECHNOLOGY EVOLUTION

6.1 Nothing in this Agreement shall constrain or otherwise limit SBC-13STATE from continuing to evolve and otherwise modify its networks by, for example, deploying new and different technologies and altering the manner in which LWC and other products and services are provided. SBC-13STATE shall retain the right to deliver LWC or functionalities comparable to LWC or the local exchange service SBC-13STATE provides to its retail voice customers in the areas in which it then serves as the incumbent local exchange carrier over the technologies and in the manner that SBC-13STATE chooses in providing LWC and the other products and capabilities that are the subject of this Agreement.

7. PRICING

7.1 The prices that shall apply under this Agreement are set forth in the attached LWC Pricing Schedule (including service order charges), which is attached and incorporated herein by this reference.

7.2 In the LWC Pricing Schedule, where rates are shown as monthly, a month will be defined as a calendar month. The minimum term for each LWCAL will be one (1) month. After the initial month for a LWC, billing will be on the basis of whole or fractional months used.

7.3 Where the capabilities exists, SAGE may purchase certain optional AIN-based features set forth on the LWC Pricing Schedule, on a per-LWCAL or per-usage basis as noted. Where activated and loaded in the Serving Switch, SAGE may purchase business line hunting to serve business LWC End Users, on a per-

business LWC Number basis. The prices for these optional enhancements are set forth in the LWC Pricing Schedule.

7.4 The prices for LWC may be discounted (subject to pro-rating consistent with Section 7.2), subject to this Section 7.4.

7.4.1 The monthly recurring LWCAL Base Rate is subject to discounting, as follows:

7.4.1.1 $1.00 per LWCAL, where the average Days Sales Outstanding (D-S-O) is no greater than 30 days over a Measurement Period (3-month average DSO) reporting basis across all **SBC-13STATE** for the purchases made under this Agreement.

7.4.1.1.1 D-S-O is calculated by using total outstanding receivables divided by total reported current billing (using **SBC-13STATE** Accounts Receivable Management System ("ARMS") end of month report results), t times 30 days. This would mean that if all bills are being paid prior to invoice due date, the outcome would be less than 30 days in a given month. As long as the average D-S-O result is less than 30 days monthly, then the average 3 month D-S-O result would also be less than 30 days, when calculating a Measurement Period D-S-O (using 3 months of total receivables divided by 3 months billed charges times 30 days, using the monthly ARMS results for the Measurement Period). In calculating D-S-O, charges deemed erroneous by both Parties will be excluded.

7.4.1.2 $1.00 per LWCAL, if Measurement Period Churn is less than 6.5000 %.

7.4.1.2.1 If Measurement Period Churn is above 6.5000% for two (2) consecutive Measurement Periods but is below 7.5000%, the $1.00 discount will continue for the following Application Period. If the Measurement Period Churn for the next Measurement Period (making it the third consecutive Measurement Period) is at or below 6.5000%, the $1.00 discount will remain in effect for the next Application Period. However, if at the end of that third Measurement Period, the Measurement Period Churn rate is above 6.5000% but is less than 7.5000%, the Measurement Period Churn discount will be reduced to a rate of $0.50 per LWCAL for that next Application Period. If instead during that third Measurement Period, the Measurement Period Churn rate is above 7.5000%, the discount will be eliminated, i.e., $0.00 discount per LWCAL, for that next Application Period. If the Measurement Period Churn rate is above 7.5000% for two (2) consecutive Measurement Periods, the $1.00 discount per LWCAL will be eliminated, i.e., $0.00 discount. The Parties acknowledge and agree that the foregoing is a "rolling" process where the above is applied from each Measurement Period to the next, such that every two (2) consecutive Measurement Period is subject to the above and every three (3) consecutive as well. The Parties also acknowledge and agree that the opportunity to gain the Measurement Period Churn discount is available throughout the effectiveness of the Agreement, even if the Measurement Period Churn discount would go to $0.00 at any time.

7.4.1.2.2 Notwithstanding the potential discount available to SAGE for Measurement Period Churn below the specified level or any other provision of this Agreement, the Parties acknowledge that this Agreement is not intended and shall not in any way limit or otherwise have any effect whatsoever on either Party's and/or its respective Affiliates' efforts to market and otherwise sell any telecommunications or information services to the end users and other customers of the other Party and its Affiliates. Irrespective of the Agreement, including the potential Measurement Period Churn discount, each Party and its Affiliates retain all of their rights and abilities to fully and robustly market and otherwise sell its telecommunications and information service, without regard to any possible effect on the calculation of Measurement Period Churn hereunder. No allowance shall

be made in that calculation based upon any reasons underlying the calculated Measurement Period Churn, including without limitation end users who may migrate from SAGE to an **SBC-13STATE** retail service.

7.4.1.3 In no event shall the cumulative discount to the monthly recurring LWCAL Base Rate exceed $2.00 per LWCAL per month.

7.4.2 The non-recurring Electronic Service Order Rate is subject to discounting as follows:

7.4.2.1 Where the achieved Flow Through is 96.5% or higher during any Measurement Period, the Electronic Service Order rate will be discounted for the following Application Period as shown on the LWC Pricing Schedule.

7.4.3 The discounts under Sections 7.4.1 and 7.4.2 shall be calculated and applied as follows: The Churn, D-S-O, and Electronic Flow Through calculations will be made using data starting with the first day, and ending on the last day, of the three-month Measurement Period. Any discount earned per those calculations shall then be applied to the monthly LWCAL Base Rate charges invoiced during the following Application Period, in accordance with Sections 7.4.1 and 7.4.2 (and their respective subsections).

Measurement Period	Application Period
Sept., Oct., and Nov.	following Jan., Feb., and March
Dec., Jan., and Feb.	following April, May, and June
March, April, and May	following July, August, and September
June, July, and August	following Oct., Nov., and Dec.

7.4.4 Based upon the scope and nature of this Agreement and the mutual belief that SAGE's Churn is likely to decrease based upon the offerings made available under and through this Agreement, SAGE shall be automatically entitled to the Churn discount for the period from the Effective Date through its first anniversary, subject to Section 7.4.1.3. Thereafter whether SAGE is entitled to any discounts for Churn shall be determined in accordance with Section 7.4.1.2.

7.4.5 A $1.00 discount from the LWCAL Base Rate per LWCAL for the D-S-O discount, and a discounted Electronic Service Order rate of $5.00 per LSR, shall be applied prospectively from the Effective Date through September 30, 2004, subject to Section 7.4.1.3. Thereafter whether SAGE is entitled to any discounts shall be determined in accordance with Sections 7.4.1 and 7.4.2.

8. PHASED-IN IMPLEMENTATION

8.1 SAGE understands and acknowledges that, as of the negotiation of this Agreement, **SBC-13STATE**'s systems (including ordering, provisioning, maintenance, and billing systems) are not yet able to accommodate LWC as a unique and separate product offering. Accordingly, the transition shall be performed in two phases.

8.1.1 **Phase I:** Phase I involves using existing UNE classes of service and USOCs with LWC. Beginning within 60 days of the Effective Date, all of SAGE's UNE-Ps and any retail or resold residential or small business POTS service using basic analog switching to serve Eligible End Users shall be transitioned to, and provided as, LWC. **SBC-13STATE** may (and is planning) to adopt interim measures in order to render a bill to SAGE for LWC (e.g., using multiple USOCs to bill a single LWC charge) in advance of system changes, and SAGE shall pay the charges billed using such interim measures. Details regarding any interim measures will be made available to SAGE. The inability or other failure by **SBC-13STATE** to bill SAGE any LWC charge(s) shall not in any event act as a waiver by **SBC-13STATE** of its right to subsequently bill such LWC charge(s) at the prices and price structures included in this Agreement, or relieve SAGE of its obligation to pay those charges when rendered, on a retroactive basis and/or a prospective basis.

8.1.2 **Phase II:** Phase II will involve the transition to new LWC-specific class of service (COS) and possibly new USOCs, when and where **SBC-13STATE** is able to support them. SAGE acknowledges that this may occur on a State-by-State, region-by-region rollout. After the transition

to Phase II, LWC will only be provided under the LWC-specific COS and any new and existing USOCs, to the full extent then-supported by **SBC-13STATE**'s systems. **SBC-13STATE** shall bill, and SAGE shall pay the prices and charges established hereunder on a retroactive and/or prospective basis (including regardless of any provisions applicable to billing, including time/timing limitations and/or restrictions and processes, that might be set forth in or otherwise applicable under or to the Agreement or such billing). **SBC-13STATE**'s provisioning of LWC is expressly subject to this Section and in no way constitutes a waiver of **SBC-13STATE**'s rights under this Agreement to bill, charge for and collect payment for LWC.

8.1.3 The Parties acknowledge and agree that each Party will incur costs in implementing Phase I and Phase II, including the conversions related thereto, and each Party shall bear its own costs, including that **SBC-13STATE** shall not charge SAGE any service order charges for either of the conversions.

8.1.4 Phase II Transition Parameters

8.1.4.1 Calling scopes do not change

8.1.4.2 **SBC-13STATE** shall provide SAGE with the new list of USOCs at least 90 days before any conversion date for actual USOCs

8.1.4.3 Flash cut – SAGE shall not be required, on an SBC-region basis, to maintain in its systems both the UNE USOCs and the LWC USOCs at the same time.

8.1.4.3.1 Specifically, SAGE will not be required, on an SBC-region basis, to maintain the UNE USOCs for provisioning at the same time as it operates according to the LWC USOCs pertaining to billing.

8.1.4.3.2 To meet these criteria, conversions will take place by a flash-cut procedure on a region-by-region basis; or, alternatively, a simultaneous flash cut of all regions.

8.1.4.4 Process to be determined by the Process Task Force

8.1.4.4.1 It is understood by the Parties that there is a significant difference in system impact based upon whether the conversion is merely a mapping of currently used USOCs into the new LWC USOCs, as opposed to a conversion process that modifies the logic, method or sequence of provisioning.

8.1.4.4.2 To the extent possible, the existing gateways for wireline provisioning will be utilized.

8.1.4.4.3 Gateways for additional services shall be built on technologies similar to existing wireline provisioning platform in both speed and throughput.

8.1.4.4.4 To the extent practical, any new gateways shall be similar to the old gateways and if any changes to the processes in effect prior to this Agreement that may be customer-affecting, will be reviewed by the Process Task Force.

9. SERVICE ASSURANCE PLAN

9.1 The purpose of the service assurance plan is to establish warranty levels that represent reasonable performance measure payouts.

9.1.1 OSS Interface Ability

9.1.2 Order Confirmation Timelines

9.1.3 Order Completion Notifier Timelines

9.1.4 Percent Missed Due Dates

9.1.5 Installation Quality

9.1.6 Trouble Report Rate

9.1.7 Mean Time to Restore

See also Attachment Service Assurance Plan.

10. PAY-PER-CALLS

10.1 SAGE is solely responsible for 900/976/other similar pay-per-call calls originating from LWCALs, and associated charges. **SBC-13STATE** will provide SAGE the functionality of blocking calls 900/976 calls on a per-LWCAL basis.

11. [** REDACTED **]

12. MOST FAVORABLE TREATMENT

12.1 **SBC-13STATE** commits that the price and price-affecting terms and conditions for LWC under this Agreement shall be no less favorable, on a 13-state basis, than those under which LWC are voluntarily provided by **SBC-13STATE** to other telecommunications carriers either purchasing the same or fewer quantities of LWC or that are not subject to provisions that are similar to Sections 1.3.3, 1.4. and 1.4.2 hereof, in the same States and in the same geographic areas where SAGE purchases LWC (determined after taking into account the application of Sections 1.3.3, 1.4, and 1.4.2, if triggered, and assuming SAGE meets all applicable volume and other price-related commitments in the other carrier's agreement to qualify for the same pricing as the other carrier). The exclusive means and standard in applying this Section 12.1 shall be as follows:

12.1.1 Solely for SAGE's use in conjunction with this Section 12.1 and for no other purpose whatsoever, **SBC-13STATE** may elect to provide SAGE another telecommunications carrier's LWC agreement (appropriately redacted so far as possible as to not disclose or tend to disclose such carrier's identifying information), to the extent permitted by law and by such other agreement. SAGE shall have a right for 45 days after receipt of such agreement to analyze the application of its terms and conditions (as of the effective date of such carrier's LWC agreement), to SAGE's actual purchases and activities under this Agreement for the most recent invoice dated prior to the effective date of such other carrier's LWC agreement (including without limitations using order activities; actual LWC End Users and their locations, distribution, and usage; and taking into account SAGE's and such carrier's respective reciprocal compensation arrangements, and taking into account the discounts available under this Agreement and any discounts available under such carrier's LWC agreement), with the Parties' intent being to closely estimate what SAGE would have paid under such carrier's LWC agreement. If, based exclusively upon that estimation, SAGE believes it would have saved at least 2.5% under such agreement, SAGE may request re-negotiation of this Agreement by providing written notice delivered to **SBC-13STATE** no later than 5:00 p.m. Central Time on that 45th day, which notice shall include SAGE's estimation in sufficient detail so as to demonstrate to **SBC-13STATE** that it is entitled to request the re-negotiation (and to the extent **SBC-13STATE** disagrees with SAGE's estimation, either Party may invoke the dispute resolution provisions hereof to determine whether SAGE has a right to request re-negotiation of this Agreement).

12.1.2 If **SBC-13STATE** does not provide such other carrier's LWC agreement under Section 12.1.1, then **SBC-13STATE** shall perform the estimation in accordance with Section 12.1.1. If **SBC-13STATE**'s estimation reveals that SAGE would have saved at least 2.5% under such agreement, then **SBC-13STATE** shall immediately notify SAGE of such circumstance and, thereafter, SAGE shall have a right for 45 days after that notice to request the re-negotiation of this Agreement. The exclusive means of invoking that right shall be by providing written notice delivered to **SBC-13STATE** no later than 5:00 p.m. Central Time on that 45th day.

12.1.3 Any LWC agreement or other related information provided by **SBC-13STATE** under this Section 12.1 (including any copies, excerpts, and summaries thereof) shall be returned to **SBC-13STATE** no later than the 45th day (under either Section 12.1.1 or 12.1.2, as applicable), whether or not SAGE

requests the re-negotiation of this Agreement., and with SAGE retaining no copies, excerpts, summaries, data, analysis, or any other information attributable to or derived from such agreement.

12.1.4 Any LWC agreements or information provided by **SBC-13STATE** under this Section 12.1 shall be strictly confidential in accordance with Section 27, Non-Disclosure. The provisions of this Agreement shall continue to apply until the effective day of any amendments or the effective date of any successor agreement, if any, negotiated under this Section 12.1. If the parties do not reach a mutually agreed upon amendment or successor agreement, SAGE shall have a right to terminate this Agreement upon 180 days' written notice. Without limiting the application of the other provisions of this Agreement, including to this Section 12.1, in no event shall SAGE or any other person or entity be entitled to indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages, or any lost business opportunity/profits, in connection with or related to this Section 12.1.

12.2 If during any period hereunder beginning on July 1, 2008, SAGE voluntarily agrees to pay or is paying a non-**SBC-13STATE** ILEC within any of the 13 states more for an "Unbundled Network Element Platform" (the so-called "UNE-P") that uses switching capability that is substantially similar to Basic Analog Switching, than the LWC price (calculated without regard to the discounts potentially available under Section 7.4 hereof or reciprocal compensation arrangements, and using 1600 MOUs of originating interswitch calling and 1000 MOUs of terminating interswitch calling), SAGE shall immediately notify **SBC-13STATE** of such circumstance and, thereafter, **SBC-13STATE** shall have a right for 45 days after that notice to request the re-negotiation of this Agreement. The exclusive means of invoking that right shall be by providing written notice delivered to SAGE no later than 5:00 p.m. Central Time on that 45th day.

12.3 For purposes of this Section 12 only, "LWC" as it is applied in reference to another carrier's agreement shall refer to any service substantially similar to LWC as provided in this Agreement.

13. CARRIER RECIPROCITY

13.1 This Agreement is reciprocal in nature, in that SAGE is required, upon written request, to provide a LWC-equivalent offering to **SBC-13STATE** (or any of its current or future Affiliate(s) which is a telecommunications carrier providing local exchange service) in any geographic area where SAGE provides local circuit-switched wireline service over its own facilities (at a minimum, using its own basic analog loops and basic analog switching). The LWC-equivalent offering SAGE would make available would be provided on the same terms and conditions, including pricing, as **SBC-13STATE** is making LWC available within its Service Areas to SAGE. Notwithstanding the foregoing, SAGE would not be required to provide as part of this reciprocity arrangement features or functions not active in its own retail product offering, or which are not commercially reasonable for SAGE to obtain. As examples, SAGE might have limited service without the equivalent capabilities to provide non-dedicated transport, LATA-wide calling scopes, or certain SS7 functionalities.

14. WHITE PAGES DIRECTORY LISTINGS

14.1 General White Pages Requirements

14.1.1 **SBC-13STATE** publishes alphabetical White Pages directories for their respective geographic local service areas. With LWC, SAGE will be providing local exchange telephone service via LWC to LWC End Users in the same area(s). **SBC-13STATE** therefore offers to include SAGE's LWC End Users' listing information in the appropriate **SBC-13STATE** White Pages directories, at parity with that provided to **SBC-13STATE** retail end users, as set forth herein.

14.1.2 Subject to **SBC-13STATE**'s practices regarding White Pages directory publishing, as well as to state and/or federal rules and regulations applicable to the provision of telephone directories generally, **SBC-13STATE** will include in the appropriate **SBC-13STATE** White Pages directories the primary alphabetical listings of all SAGE LWC End Users located within the local directory scope. When SAGE provides its subscriber listing information to **SBC-13STATE** directory listings database, SAGE

will receive for its LWC End User, one primary listing in corresponding **SBC-13STATE** White Pages directory and a corresponding listing in **SBC-13STATE**'s Directory Assistance database.

14.1.3 SAGE will provide accurate subscriber listing information for its LWC End Users to **SBC-13STATE** via a mechanical or manual feed of the directory listing information to **SBC-13STATE**'s directory listing database. SAGE agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon SAGE reaching a volume of two hundred listing updates per day, whichever comes first. SAGE's LWC End User subscriber listings will be filed alphabetically in the directory listing database among **SBC-13STATE**'s end user listings. SAGE shall furnish to **SBC-13STATE**, in a form acceptable to both Parties, subscriber listing information pertaining to SAGE's LWC End Users located within the local directory scope, along with such additional information as **SBC-13STATE** may require to prepare and print the alphabetical listings of said directory, as set forth in the CLEC Online (https://clec.sbc.com/clec) web site. SAGE will submit listing information within one (1) Business Day of installation, disconnection or other change in service (including change of non-listed or non-published status) affecting the Directory Assistance database or the directory listing of an LWC End User. In addition, for timely inclusion in the published White Pages directory, SAGE must submit all of its LWC End User listing information intended for publication by the directory close date for that particular White Pages directory.

14.2 Enhanced and Non-Published White Pages Requirements

14.2.1 Where a SAGE LWC End User desires foreign, enhanced, additional or other special listing treatment in addition to the primary listing to appear in the White Pages directory, SAGE will be responsible for ordering the desired special listing treatment on a Local Service Requests submitted to the **SBC-13STATE** Local Service Center. The LSRs for foreign, enhanced, additional or other special listing treatment shall be subject to the same directory close deadlines applicable to that particular White Pages directory. Upon receipt of a timely LSR for such listings, **SBC-13STATE** will publish the requested listing(s) and begin assessing SAGE the corresponding monthly recurring charge, which charge shall be charged at a rate of 65% of the then current SBC-13STATE retail tariff rate.

14.2.2 Where a SAGE LWC End user desires not to be listed in the White Pages directory and/or the Directory Assistance database, SAGE will be responsible for submitting LSR(s) to the **SBC-13STATE** Local Service Center requesting that the LWC End User listing not be published in **SBC-13STATE**'s White Pages and/or Directory Assistance databases. The LSRs for not publishing White Pages listings will be subject to the same directory close deadlines applicable to that particular White Pages directory. Upon receipt of a timely LSR, **SBC-13STATE** will make the applicable non-published and/or non-listed designations in the White Pages and/or Directory Assistance databases and begin assessing SAGE the corresponding monthly recurring charge, which charge shall be charged at a rate of 65% of the then current SBC-13STATE retail tariff rate.

14.3 Third Party Publisher Requests for LWC End User Listings

14.3.1 **SBC-13STATE** agrees to serve on SAGE's behalf as the single point of contact for all independent and Third Party directory publishers who seek to include SAGE's LWC End User listing information in an area White Pages directory, and to handle SAGE's LWC End User listing information in the same manner as for **SBC-13STATE**'s end user listing information. **SBC-13STATE** further agrees not to charge SAGE for serving as the single point of contact with independent and Third Party directory publishers, no matter what number or type of requests are fielded.

14.3.2 In exchange for **SBC-13STATE** serving as the single point of contact and handling all LWC End User listing requests free of any charge separate to SAGE, SAGE authorizes **SBC-13STATE** to include and use the published SAGE LWC End User listing information provided to **SBC-13STATE** pursuant to this Agreement to all requesting independent and third party directory publishers, as well as in **SBC-13STATE**'s White Pages directory. Included in this SAGE authorization is a release of SAGE listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable State regulations and orders. Also

included in this SAGE authorization is **SBC-13STATE**'s use of SAGE's LWC End User subscriber listing information in **SBC-13STATE**'s directory assistance, directory assistance related products and services, and directory publishing products and services.

15. [** REDACTED **]

16. INTERCARRIER COMPENSATION

16.1 As between **SBC-13STATE** and SAGE and its Affiliates, Local Traffic, ISP-Bound Traffic, Extended Area Service Traffic and Optional Extended Area Service Traffic originated from, or terminated to, an LWCAL or LWC Number shall be subject to a bill and keep arrangement (e.g., no separate reciprocal compensation settlement payments, including no tandem compensation).

16.2 SAGE shall be solely responsible for establishing compensation arrangements (and any associated charges) with third party carriers (e.g., ILECs interexchange carriers, CMRS, and CLECs) for traffic originated from, or terminated to, an LWC Number for such traffic with third party carriers (e.g., ILECs, interexchange carriers, CMRS, CLECs). The foregoing includes exchange access charges and reciprocal compensation charges. SAGE shall indemnify, defend, and hold harmless **SBC-13STATE** against any charges, claims, damages, liabilities and expenses from third parties ("Losses") arising from traffic originated from and/or terminated to any SAGE LWCAL or LWC Number. **SBC-13STATE** may provide information on traffic that transits its network to other telecommunications carriers or entities involved in completing Sage's customers' calls as appropriate to resolve traffic compensation issues. With respect to the information provided by **SBC-13STATE** for Texas, **SBC-13STATE** shall use the terms of the Letter Agreement - Non-Disclosure Agreement ("NDA") Process that was agreed to between the Parties for the term of the NDA. At the end of the term of that Agreement, if the NDA is not extended or replaced by agreement of the Parties, exchange of information shall be governed by the other provisions of this section. SAGE agrees that **SBC-13STATE** is not required to function as a billing intermediary for billing and payment of traffic exchanged between SAGE and third party carriers related to this Agreement. Under no circumstances will **SBC-13STATE** be required to pay any intercarrier compensation to any entity including, without limitation, a third party carrier for termination of traffic originated from, or terminated to, by a LWCAL or LWC End User.

16.3 In accordance with this Section 16 of the Agreement, all Local Traffic, ISP-Bound Traffic, Extended Area Service Traffic and Optional Extended Area Service Traffic is subject to a "bill and keep" arrangement. In States in which **SBC-13STATE** has offered to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan ("FCC Plan") pursuant to the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order"), the Parties hereby agree that the rates, terms and conditions set forth in the FCC Plan will not apply to ISP-Bound Traffic exchanged under this Agreement. The traffic exchanged between LWC End Users and LWCALs, and **SBC-13STATE** end users shall not be included in any calculation under the FCC Plan for determining growth caps or determining amounts of traffic to be compensated, if any, at the FCC's interim rates as set forth in the FCC's ISP Compensation Order.

16.4 Except as provided for the limited time in Texas, compensation for interstate intraLATA toll traffic exchanged between LWCALs and **SBC-13STATE** end users will be at rates no higher than **SBC-13STATE's** Interstate Access Service Tariff rates. Until June 30, 2004, in Texas, SAGE will be entitled to charge up to the access rates for interstate intraLATA toll traffic access that it is charging as of the Effective Date, or the **SBC-13STATE** rate, whichever is higher. On July 1, 2004 and hereafter, SAGE will charge the **SBC-13STATE** rate. A Party shall only be permitted to charge the other end office rate elements for termination of such traffic (e.g., a Party shall not charge the other tandem switching and common transport rate elements). For purposes of this Agreement and for determining which traffic is subject to access charges, intraLATA toll traffic is as defined in **SBC-13STATE**'s Interstate Access Service Tariff. This

Section 16.4 does not apply to interstate IntraLATA toll traffic carried by a third party interexchange carrier or toll provider.

16.5 Compensation for intrastate intraLATA toll traffic exchanged between LWCALs and **SBC-13STATE** end users will be at rates no higher than **SBC-13STATE**'s Intrastate Access Service Tariff rates. A Party shall only be permitted to charge the other end office rate elements for termination of such traffic (e.g., a Party shall not charge the other tandem switching and common transport rate elements). This Section 16.5 does not apply to intrastate IntraLATA toll traffic carried by a third party Interexchange carrier or toll provider.

16.6 Under no circumstances shall **SBC-13STATE** be liable to SAGE or any third party for any Losses including, without limitation, intrastate and/or interstate switched access charges, arising out of or related to Voice Over Internet Protocol traffic or any interexchange circuit-switched traffic utilizing in whole or part IP technology terminated to the LWCAL that was delivered to **SBC-13STATE** over local interconnection trunk groups from a third party carrier.

17. OPERATIONAL ISSUES

17.1 **SBC-13STATE** and SAGE agree to mutually work on evolving the LWC ordering processes to achieve an objective of Flow Through level of 98% of Local Service requests (LSRs) for LWC.

17.2 Ordering and, by no later than August 1, 2004, Trouble Reporting Interfaces must be electronic via existing and currently supported **SBC-13STATE** versions of OSS interfaces.

18. EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION

18.1 The Effective Date of this Agreement shall be July 1, 2004 (the "Effective Date").

18.2 This Agreement shall commence upon the Effective Date and shall automatically expire at 11:59:59 p.m. Central Time on July 31, 2011 ("Expiration") unless terminated earlier as provided for herein.

18.3 **SBC-13STATE** shall have the right to set all of the LWC prices at a market price determined by **SBC-13STATE**, beginning on and after July 1, 2008. Any increase under this Section 18.3 in the LWCAL base rate in any single year shall not exceed the LWCAL Base Rate, prior to any discounts, charged in the month prior to the month in which the increase will take effect, times the percent increase in the Consumer Price Index for the most recent 12 month period for which data is available at the time **SBC-13STATE** provides written notice hereunder. **SBC-13STATE** may exercise that right for the first time by providing SAGE written notice no later than 5:00 P.M. Central Time on December 31, 2007. If **SBC-13STATE** provides such a notice under this Section, SAGE shall have the right to request to re-negotiate or terminate this Agreement by providing **SBC-13STATE** 180 days written notice. The LWC price changes set forth in any **SBC-13STATE** notice provided on or before December 31, 2007 shall become effective as of July 1, 2008. Thereafter, any such price changes shall be made by providing SAGE written notice of the changes no later than December 31st of any year during the remaining Term (i.e., 2008, 2009, and 2010), with the changes becoming effective on the July 1st immediately following any such **SBC-13STATE** notice. Unless this Agreement is terminated, the provisions contained within Section 12 will continue to apply.

18.4 In the event that SAGE should wish to pursue a successor agreement with **SBC-13STATE** to have in place after the Expiration, SAGE must provide **SBC-13STATE** with a written request to negotiate no later than 180 days prior to the Expiration. Upon **SBC-13STATE's** receipt of SAGE's request to negotiate, the Parties shall commence good faith negotiations for a successor agreement. The terms and conditions, including pricing, of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of the successor agreement; or (ii) the Expiration.

18.5 Notwithstanding any other provision of this Agreement, and in addition to **SBC-13STATE's** rights to terminate under other Sections of this Agreement, including without limitation Sections 18.6, 18.7, and 29, , a Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or breaches a material provision of this Agreement and the other Party fails to cure such nonperformance or

breach by 5:00 p.m. Central Time on the 45th calendar day after receipt of written notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00 p.m. Central Time of the 14th day following receipt of the nonperformance/breach notice, providing with specificity the basis for its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 26. If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by deadline on the 45th day that the nonperformance/breach has been cured. Any termination of this Agreement pursuant to this Section 18 shall take effect in accordance with the written notice delivered to the nonperforming/breaching Party after it failed to cure and/or to certify by the deadline on that 45th day.

18.6 In the event that any federal or state government action (including by a regulatory agency, a court, or a legislature) requires **SBC-13STATE** to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to SAGE, any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow SAGE, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement, including by way of example, at prices or price structure/application or reciprocal compensation arrangements different than agreed to in this Agreement as a whole by the Parties, the Parties both agree, except to the extent prohibited by law, to waive their respective rights to such change in the Agreement, including but not limited to waiving any right they may have to obtain the terms available to other carriers, persons or entities as a result of such government action. However, if the Parties are prohibited from legally waiving the effects of such government action, then as between the Parties the provisions of Section 5.3 are deemed to be rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect and the procedures of Section 29 (Severability) shall be invoked to address Section 5.3 and those provisions that were required to be provided, modified, or otherwise made available to SAGE, any other telecommunications carrier, or any other person or entity. Where the foregoing invocation of Section 29 results in a right to terminate and is the result of a state government action, the right shall arise only in the state in which such action occurred and any termination of this Agreement would be for that state only (unless this Agreement is terminated pursuant to Section 18.7).

18.7 Section 18.7 (all references to Section 18.7 expressly includes its subsections) applies in accordance with its provisions, notwithstanding Section 18.6 or any other provision in this Agreement to the contrary.

18.7.1 **SBC-13STATE** shall have the right to terminate this Agreement in whole or in part, upon written notice to SAGE, in the event that any federal action, or state government actions in two or more states, (including by a regulatory agency, a court, or a legislature) requires **SBC-13STATE** to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow SAGE, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement as they were agreed to by the Parties, including by way of example, at prices or price structure/application or reciprocal compensation arrangements different than agreed to in this Agreement as a whole by the Parties. If such state government action only occurs in one state, **SBC-13STATE** shall have the right to terminate the Agreement in that state by written notice to SAGE. If such government action occurs at the federal level or in two or more states, **SBC-13STATE** shall have the right to terminate, at its election, the Agreement in its entirety or, alternatively, only in one or more of the affected states, by written notice to SAGE.

18.7.2 This Agreement shall be null and void, automatically and in its entirety in any single state if this Section 18.7 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect in such state. This Agreement shall be null and void, automatically and in its entirety if either a) by state government action in two or more states, or b) by federal government action, this Section 18.6 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect by such state and/or federal government action(s).

18.7.3 Any termination or invalidation of this Agreement under this Section 18.7 shall be effective as of the day before the effective date of such governmental action that triggered the invalidation or right to terminate, and **SBC-13STATE** and SAGE agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on Sage LWC End Users.

18.7.4 Each Party understands and acknowledges that (i) any right to terminate under this Section 18.7 becomes available even if this Agreement between the Parties themselves would otherwise be unaffected by the triggering federal or state government action; and (ii) that this Section 18.7 (as well as Section 18.6) is triggered and applies on each occurrence of any federal or state government action described in Sections 18.6, 18.7.1 and/or 18.7.2.

18.8 Upon the Expiration or termination of this Agreement, **SBC-13STATE** and SAGE shall cooperate in good faith to effect an orderly transition of SAGE end users under this Agreement; provided that SAGE shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its LWC End Users have been transitioned from LWC to another serving arrangement of SAGE's choosing that is generally available under Sections 251 and 252 of the Act at that time by the Expiration or termination of this Agreement or that such LWC End User customers have otherwise been informed by SAGE that their LWC-based services will be discontinued/disconnected by SAGE on or before the Expiration or termination, unless otherwise provided herein or agreed by both Parties.

18.9 Upon the Expiration or termination of this Agreement, in one or more State, neither Party shall have any further obligation under this Agreement in such State or State(s), except:

18.9.1 Each Party's confidentiality obligations shall survive, and

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

18.9.3 Each Party 's indemnification obligations shall survive; and

18.9.4 As provided in Section 40.

In any event, **SBC-13STATE** shall be under no obligation to provision LWC or any other offering provided pursuant to this Agreement as of and after the Expiration or termination.

19. REUSE OF FACILITIES

19.1 Each Party will abide by any applicable federal and state laws and regulations in obtaining end user authorization prior to changing an end user's provider of services through or by using LWC and in assuming responsibility for any charges that may apply to the extent the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) or any state regulation applies to the changing of an end user's provider of services through or by using LWC.

19.2 When a LWC End User changes or withdraws authorization from SAGE, SAGE shall immediately release the facilities belonging to or possessed by **SBC-13STATE** being used to provide LWC in accordance with that LWC End User's direction or that of the LWC End User's authorized agent and shall promptly provide SBC with all information necessary for **SBC-13STATE** to reclaim or reuse the facilities, including, but not limited to the circuit ID of the affected facility.

19.3 Further, when a LWC End User abandons its service (that is, service in a particular place of business or domicile), **SBC-13STATE** is free to reclaim the LWC End User-specific facilities, and is free to issue service orders required to reclaim such facilities. The carrier providing service to the abandoning end user shall provide all information necessary for **SBC-13STATE** to reclaim and reuse the facilities, including, but not limited to the circuit ID. The Parties agree to the re-use of existing network facilities when a LWC End User changes its provider of local exchange service, and the network facilities are provided by the same network provider.

20. BRANDING

20.1 Except where otherwise required by law or as permitted by Section 41, SAGE shall not, without **SBC-13STATE**'s written authorization (which shall not be unreasonably withheld), (i) offer LWC or any offering provided under this Agreement using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of **SBC-13STATE** or its Affiliates, or (i) state or imply that there is any joint business association or similar arrangement with **SBC-13STATE** or its Affiliates in the provision of services to SAGE's own customers. SAGE may brand LWC (or any other offering provided under this Agreement) with its own brand name, but neither **SBC-13STATE** nor its Affiliates will provide for SAGE branding of LWC or any other offering provided under this Agreement.

20.2. Neither **SBC-13STATE** nor its Affiliates shall be obligated to provide SAGE with branding of any kind including but not limited to, technician apparel, vehicles, forms; nor shall **SBC-13STATE** or any of its Affiliates technicians carry and provide to SAGE's customers, SAGE-branded business cards or other printed materials.

21. FORCE MAJEURE

21.1 **SBC-13STATE** shall not be responsible for delays or failures in performance resulting from acts or occurrences beyond **SBC-13STATE**'s reasonable control, regardless of whether such delays or failures in performance were foreseen or foreseeable, including, without limitation: fire, explosion, power failure, power blackouts, cable cuts, acts of God, acts of nature, unusually severe weather conditions, acts of civil or military authority, war, terrorist acts, riots, insurrections, revolution, civil commotion, or acts of public enemies, any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, work stoppages, slowdowns, picketing or boycotts; embargoes, epidemics, nuclear accidents, or delays caused by SAGE or by essential service or equipment vendors; or any other circumstances beyond **SBC-13STATE**'s reasonable control. In such event, **SBC-13STATE** shall, upon giving prompt notice to SAGE be excused from such performance on a day-to-day basis to the extent of such interference (and SAGE shall likewise be excused from performance of its obligations on a day-for-day basis to the extent its obligations relate to the performance so interfered with). **SBC-13STATE** shall use its reasonable efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

22. GOVERNING LAW

22.1 This Agreement shall be governed by and construed in accordance with the laws of the **SBC-13STATE** State in which the LWC was provided and if agreement cannot be reached upon which state law applies or if the same matter involves multiple States, the laws of the State of Texas shall apply, and in any event without regard to the conflict of law principles of the applicable State's laws.

23. LIMITATION OF LIABILITY

23.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for 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) ("Loss" or "Losses") relating to or arising out of such Party's performance under this Agreement and any and all dealings and arrangements between the Parties relating to LWC and the other offering available hereunder (but excluding any Loss(es) relating to or arising out of any **SBC-13STATE** tariffs and products purchased by SAGE from **SBC-13STATE** tariffs, which shall be governed exclusively by such tariffs) ("LWC Operations"), 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 shall not exceed in total the amount **SBC-13STATE** or SAGE has charged or would have charged to the other Party for the affected service(s) that was not performed or was improperly performed (not to exceed twelve (12) months). Neither SAGE nor **SBC-13STATE** shall be liable to the other Party for any consequential damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including 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 a 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; provided that the foregoing shall not limit a Party's obligation under Section 23.2 to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any Losses, and consequential damages of such third party, subject to Section 23.3 below; provided, however, nothing in this Section 23.1 shall impose indemnity obligations on a Party for any Loss or consequential damages suffered by that Party's end user in connection with any affected services. Rather, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's affiliates, and its respective officers, directors, employees and agents) against any Loss or claim made by the Indemnifying Party's end user.

23.2 Except as otherwise expressly provided in specific appendices and subject to Section 23.5 below, in the case of any Loss alleged or claimed by a third party to have arisen out of the gross negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own gross negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

23.3. A Party may, in its sole discretion, provide in its tariffs and contracts with its end users or third parties that relate to any 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 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 23.3.

23.4 **SBC-13STATE** shall not be liable for damages to a LWC End User's premises resulting from the furnishing of any services hereunder including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by **SBC-13STATE**'s gross negligence or willful misconduct, subject to Section 23.5 below.

23.5 In the event that any Party to this Agreement or any third party ("Claiming Party") claims that any Loss was result of the gross negligence or willful or intentional misconduct of another Party ("Responding Party") to this Agreement, then the Claiming Party must establish and a court of competent jurisdiction or an Arbitration Panel, as applicable, must find: **(1) that action was taken by a fourth level or higher employee of SBC-13STATE or by a comparable level employee of SAGE; and (2) the action was taken with the specific intent to knowingly violate the law or the Agreement in a manner that would constitute a material breach and to knowingly harm the other Party or constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting life or property of the other Party; and (3) the intentional action or intentional failure to perform a manifest duty was the principal cause of a material adverse effect on the Responding Party. In the event that a Party to this Agreement establishes and a court of competent jurisdiction or an Arbitration Panel, as applicable, finds that any claimed Loss is the result of another Party's to this Agreement own gross negligence or willful or intentional misconduct (as provided in the Dispute Resolution Section, Section 26, of this Agreement), through findings of fact and conclusions of law issued by such court or Arbitration Panel, then and only then the court of competent jurisdiction or Arbitration Panel, as applicable, award up to treble monetary damages excluding attorneys fees, interests and costs for such gross negligence or intentional conduct.**

23.6 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER AGREEMENT(S) BETWEEN THE PARTIES, THE PARTIES**

VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE DISPUTE RESOLUTION SECTION, SECTION 26, OF THIS AGREEMENT (AS TO THE SUBJECT-MATTER OF THIS AGREEMENT) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT AND ALL DEALINGS, ARRANGEMENTS, NEGOTIATIONS, AND/OR COMMUNICATIONS BETWEEN THE PARTIES RELATING TO SBC-13STATE'S LWC OPERATIONS, INCLUDING SUCH MATTERS WITH RESPECT TO ACTUAL OR POTENTIAL WHOLESALE TERMS AND CONDITIONS APPLICABLE TO ANY AREA WITHIN THE DOMESTIC UNITED STATES IN WHICH SBC-13STATE OPERATES (BUT EXCLUDING ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF ANY SBC-13STATE TARIFFS, WHICH SHALL BE GOVERNED EXCLUSIVELY BY SUCH TARIFFS), AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY.

24. INDEMNITY

24.1 **Responsibility of Each Party for its Services:** Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the services provided by the other Party, its agents, subcontractors, or others retained by such Parties.

24.2 **Claims of Loss by Third Party(ies):** Except as otherwise expressly provided herein or in specific appendices and subject to Section 23, Limitation of Liability above, and to the extent not prohibited by applicable 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 gross negligence or willful misconduct **("Fault")** of 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 and performance under this Agreement and SBC-13STATE's LWC Operations.

24.3 **Claims of Loss by an End User of a Party:** Except as otherwise expressly provided herein or in specific appendices and subject to Section 23 Limitation of Liability above including without limitation Section 23.5, in the case of any Loss alleged or claimed by an end user of either Party, the Party whose end user alleged or claimed such Loss (the **"Indemnifying Party"**) shall defend and indemnify the other Party (the **"Indemnified Party"**) against any and all such claims or Losses by its end user regardless of whether the underlying service giving rise to such claim or Loss was provided or provisioned by the Indemnified Party, unless the claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party. Notwithstanding anything to the contrary in this Section 24.3 and this Agreement, **SBC-13STATE** shall have no liability to the end users of SAGE for claims arising from the provision of LWC to SAGE, including but not limited to claims related to the marketing or sales of its services provided hereunder, delayed restoral or nonrestoral of service, quality of service or any resulting billing or any other type of dispute. SAGE agrees to indemnify, defend, and hold **SBC-13STATE** harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by SAGE's end user for services rendered under this Agreement.

24.4 **Claims of Loss by a Party Against other Party:** Subject to Section 23 Limitation of Liability above, a Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or Loss arising from the Indemnifying Party's use of services provided, or performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: Indemnifying Party's use of 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.

24.5 **CARRIER Indemnity for Damage to Facilities**: SAGE shall reimburse **SBC-13STATE** for damages to **SBC-13STATE**'s facilities utilized to provide services hereunder caused by the gross negligence or willful act of SAGE, its agents or subcontractors or SAGE's end user or resulting from SAGE's improper use of **SBC-13STATE**'s facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than **SBC-13STATE**. Upon reimbursement for damages, **SBC-13STATE** will cooperate with SAGE in prosecuting a claim against the person causing such damage. SAGE shall be subrogated to the right of recovery by **SBC-13STATE** for the damages to the extent of such payment. In addition, SAGE hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to **SBC-13STATE** facilities and hereby agrees to release, defend and indemnify **SBC-13STATE**, and hold **SBC-13STATE** harmless, from any claims for loss or damages, including but not limited to direct, indirect or consequential damages, made against **SBC-13STATE** by an end user customer, any telecommunications service provider or telecommunications user relating to such testing by SAGE.

24.6 **Indemnification Procedures:** Whenever a claim shall arise for indemnification under this Section 24.6, 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. 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. 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. 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. 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. 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. 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. 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. 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, subject to the restrictions and limitations set forth in the Section 27, Non-Disclosure, of this Agreement.

25. BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES

25.1 **SBC-13STATE** shall include all charges under this Agreement on the monthly bill(s) rendered electronically within six (6) business days of the Bill Date as defined in Section 25.2 to SAGE (herein "Invoice").

25.1.1 Except as may be specifically permitted in this Agreement, **SBC-13STATE** may backbill SAGE for amounts found to be unbilled or underbilled six (6) months from the date on which such charges should have been billed to SAGE, to recover such charges incurred by SAGE within the six-month period preceding the date of the backbilling.

25.2 SAGE will establish monthly CABS billing dates (Bill Date) for each BAN, which Bill Date will be the same day month to month. A Party which changes, adds or deletes a BAN, which change was not initiated by the billed party, will provide written notification to the other Party's billing notice contact within 7 business days of making such change, addition, or deletion of a BAN. Each Party will provide one invoice associated with each BAN. Each Invoice must contain an invoice number (which will vary from month to month)

25.3 Monthly bills will be sent to address(es) requested by SAGE and subject to the capabilities of the applicable billing system.

25.4 Remittance in full will be due within thirty (30) days of the Invoice date. In accordance with Section 25.8, interest will apply on overdue amounts. When both Parties agree that an operations failure results in incorrect billing and such charges can be delineated from correct charges, SAGE will not have to pay nor escrow amounts for such charges deemed erroneous by both Parties.

25.5 If SAGE desires to dispute in good faith any Invoice charges, SAGE may either pay the Invoice charge then file its dispute in accordance with Section 25.8 or SAGE must complete all of the following actions before the Payment Due Date, unless otherwise agreed in writing by the Parties:

25.5.1 notify **SBC-13STATE** in writing which charges it disputes, including the total amount disputed ("Disputed Amounts"), in accordance with Section 25.6; and

25.5.2 pay all undisputed charges to **SBC-13STATE**; and

25.5.3 Unless SAGE pays **SBC-13STATE** the total Disputed Amounts, if SAGE's total outstanding and unpaid Invoice charges (calculated without regard to any dispute) exceed 5% of the then-current monthly billing under this Agreement, then SAGE must pay the excess into an interest-bearing escrow account, held by a third party escrow agent acceptable to **SBC-13STATE**, and provide evidence to **SBC-13STATE** that SAGE has met this escrow requirement. Until evidence that the full amount of the outstanding and unpaid Invoice charges that exceed 5% of the then-current monthly billing under this Agreement have been deposited into an escrow account that complies with this Section 25.5.3 is furnished to the **SBC-13STATE**, such Unpaid Charges will not be deemed to be "disputed" under Section 25.5. Failure to meet this escrow requirement when applicable shall permit **SBC-13STATE**, upon 10 days' written notice to SAGE, in addition to exercising any other rights or remedies it may have under law, to take any or all of the actions set forth in Sections 25.9.1 through 25.9.3.

25.6 A good faith billing dispute under this Agreement requires SAGE to provide a written claim to **SBC-13STATE** to permit **SBC-13STATE** to investigate the merits of the dispute. Such claims must identify the following to the respective **SBC-13STATE** billing and claims group(s) : (a) the account number under which the Invoice was rendered; (b) the specific charge that SAGE believes was billed in error; (c) the Invoice date; and (d) the reason or grounds for the dispute. Disputed amounts will either be paid or escrowed in accordance with Section 25.5.3.

25.7 With regard to Section 25.5.1 and 25.6, information regarding Disputed Amounts shall be provided to the applicable **SBC-13STATE** billing and claims group pursuant to that group's requirements, in order to allow prompt processing and resolution of billing disputes. **SBC-13STATE** billing and claims organization has a 30-day target for claims investigation and resolution. Disputed Amounts not resolved with the applicable **SBC-13STATE** billing and claims organization may then be pursued by either Party in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 26.

25.8 SAGE billing inquiries and/or claims of overbilling by **SBC-13STATE** shall be referred to **SBC-13STATE** for investigation within six (6) months of the charge(s)' first appearance on an Invoice to SAGE. Absent a claim and/or dispute by SAGE as to a charge within six (6) months from its first appearance on an Invoice to SAGE, it will be deemed that SAGE has waived its right to dispute such charges. If the Parties determine that SAGE was billed incorrectly for items rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund to SAGE is due (SAGE had paid the disputed charges), an adjustment shall be made for the overcharges and shall be credited to SAGE within thirty (30) days of the Resolution Date, as defined below. If the refund is credited to SAGE within thirty (30) days of the Resolution Date, interest will not be applicable. If the refund is not credited within thirty (30) days of the Resolution Date, the interest rate applied will be the lesser of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in that state, compounded daily from the Bill Due Date to and including the date that the refund is actually made. The resolution date will be the date upon which Notice is deemed to have been received by SAGE under the Notice provisions in this Agreement ("Resolution Date"). If the dispute is decided in favor of SBC-13STATE, SAGE shall pay the Resolved Amount to SBC within thirty (30) days of the Resolution Date. To the extent that the Disputed Amounts have been escrowed and thus are paid directly from that escrow account, SAGE shall pay **SBC-13STATE** interest on the unpaid amount no longer in dispute ("Resolved Amount") if not paid within thirty (30) days of the Resolution Date. SAGE shall pay **SBC-13STATE** interest on the Resolved Amount at the lower of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in **that** state.

25.9 Failure to pay Invoice charges by the Payment Due Date (except for the Disputed Amounts, unless not paid into escrow as may be required hereunder) shall be grounds for termination of this Agreement. If SAGE fails to pay any Invoice charges billed under this Agreement, including any late payment charges or miscellaneous charges ("Unpaid Charges"), by the Payment Due Date (except for the Disputed Amounts, unless not paid into escrow when required hereunder), **SBC-13STATE** may notify SAGE in writing that it must remit all Unpaid Charges and complete all other actions set forth in Sections 25.5.1 through 25.5.3 within ten (10) days of the receipt of that notice. If by 5:00 p.m. Central Time of the 10th day following receipt of a notice under this Section, SAGE fails to (a) fully comply with each of Sections 25.3.1 through 25.3.3, or (b) make a payment in accordance with the terms of any mutually agreed payment arrangement then agreed to by the Parties, **SBC-13STATE** may, in addition to exercising any other rights or remedies it may have under law, take any or all of the following actions, without any further notice to SAGE:

25.9.1 suspend acceptance of/reject any application, request or order from SAGE for new or additional LWCALs or any other offering hereunder, or any changes or modifications thereto (e.g., adding or deleting any vertical feature to a LWCAL); and/or

25.9.2 suspend completion of/cancel any pending application, request or order from SAGE for new or additional LWCALs or any other offering hereunder, or any changes or modifications thereto (e.g., adding or deleting any vertical feature to a LWCAL);

25.9.3 subject to Section 25.15, discontinue providing LWC or any other offering furnished under this Agreement.

25.10 If by 5:00 p.m. Central Time of the 20th day following receipt of a notice under Section 25.9, SAGE fails to (a) fully comply with each of Sections 25.5.1 through 25.5.3, or (b) pay the Disputed Amounts (paid though still disputed), or (c) make a payment in accordance with the terms of any mutually agreed payment arrangement then agreed to by the Parties, **SBC-13STATE** may, in addition to exercising any other rights or remedies it may have under law, terminate this Agreement upon 180 days' written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of LWC End Users to other serving arrangements.

25.11 Interest will accrue on overdue charges that are not paid and not Disputed Amounts, and on Disputed Amounts to the extent not escrowed as required by this Section 25.

25.12 Notwithstanding any other provision of this Agreement, **SBC-13STATE**'s exercise of any of its options under this Section 25:

25.12.1 will not delay or relieve SAGE's obligation to pay all charges on each and every Invoice on or before its applicable Payment Due Date, and

25.12.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, and the Service Assurance Plan.

25.13 **SBC-13STATE** shall have no liability to SAGE, its LWC End Users, or any other third party in the event of **SBC-13STATE**'s exercise of any of its options under this Section.

25.14 Additional charges may become applicable under this Agreement following discontinuance of LWC and/or any other offering hereunder.

25.15 The Parties shall comply with any applicable laws regarding the discontinuance of LWC or any other offering hereunder. In the event of any inconsistency with any applicable law and this Section, Section 29, Severability, shall not affect the application of this Section to the full extent permitted by law.

25.16 **SBC-13STATE** reserves the right to require a deposit to secure the payment of future billings under this Agreement if:

25.16.1 SAGE fails to timely pay bills rendered to it, except such portion of a bill that is subject to a good faith, bona fide dispute and as to which SAGE has complied with the billing dispute and escrow provisions herein; or

25.16.2 In **SBC-13STATE**'s reasonable judgment there has been an impairment of the established credit, financial health, or creditworthiness of SAGE. Such impairment will be determined from information available from available financial sources. SAGE shall be considered to be so impaired if it has not maintained a "BBB" or better long-term debt rating, or an "A-2" or better short-term debt rating by Standard & Poors for any consecutive six-month period; or

25.16.3 SAGE admits its inability to pay its debts as they come due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

In the event SAGE fails to submit the required deposit to **SBC-13STATE** within fifteen (15) days after written notice requiring such deposit as permitted by this Section, **SBC-13STATE** may, in addition to exercising any other rights or remedies it may have under law, take any of the actions set forth in Sections 25.9.1 through 25.9.3 without any further notice to SAGE.

25.17 As provided for herein, interest on overdue charges that are not Disputed Amounts, and on Disputed Amounts to the extent not escrowed will be assessed as follows:

25.17.1 If billed out of any **SBC-8STATE** billing system other than the **SBC SOUTHWEST REGION 5-STATE** Customer Records Information System (CRIS), interest will accrue from the day following the Payment Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable **SBC-8STATE** intrastate access services tariff for that State and (ii) the highest rate of interest that may be charged under applicable law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of any **SBC-8STATE** billing system other than **SBC SOUTHWEST REGION 5-STATE**'s CRIS will comply with the process set forth in the applicable **SBC-8STATE** intrastate access services tariff for that state.

25.17.2 If billed out of **SBC SOUTHWEST REGION 5-STATE**'s CRIS, interest will accrue from the day following the Payment Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable **SBC SOUTHWEST REGION 5-STATE** intrastate retail tariff governing Late Payment Charges to **SBC SOUTHWEST REGION 5-STATE**'s retail End Users that are business End Users in that state, and (ii) the highest rate of interest that may

be charged under applicable law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of **SBC SOUTHWEST REGION 5-STATE**'s CRIS will be governed by the **SBC SOUTHWEST REGION 5-STATE** intrastate retail tariff governing Late Payment Charges to **SBC SOUTHWEST REGION 5-STATE**'s retail End Users that are business End Users in that state.

25.17.3 If billed out of any **SBC MIDWEST REGION 5-STATE** billing system, interest will accrue from the Payment Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under applicable law, compounded daily from the day following the Payment Due Date to and including the date that the payment is actually made and available.

25.18 No later than twelve (12) months from the Effective Date of this Agreement, SAGE shall make all payments to **SBC-12STATE** via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC-12STATE**. Remittance information will be communicated together with the funds transfer via the ACH network. CARRIER must use the CCD+ or the CTX transaction set. SAGE and **SBC-12STATE** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by **SBC-12STATE** no later than the Payment Due Date of each bill or Late Payment Charges will apply. **SBC-12STATE** is not liable for any delays in receipt of funds or errors in entries caused by SAGE or third parties, including SAGE's financial institution. SAGE is responsible for its own banking fees.

25.18.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. SAGE is responsible for any Late Payment Charges resulting from SAGE's failure to use electronic funds credit transfers through the ACH network.

25.18.2 No later than twelve (12) months from the Effective Date of this Agreement, SAGE must make all payments to **SBC CONNECTICUT** in "immediately available funds." All payments to **SBC CONNECTICUT** must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC CONNECTICUT**. If SAGE makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If SAGE makes payment through funds transfer via the ACH network, SAGE must use the CCD+ or the CTX transaction set. SAGE and **SBC CONNECTICUT** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each payment must be received by **SBC CONNECTICUT** no later than the Payment Due Date of each bill or Late Payment Charges will apply. **SBC CONNECTICUT** is not liable for any delays in receipt of funds or errors in entries caused by SAGE or third parties, including SAGE's financial institution. SAGE is responsible for its own banking fees.

25.18.3 Invoices are deemed paid on the date of actual receipt of funds by **SBC-13STATE**, not on the date of application to the Invoice by **SBC-13STATE**. If payment is made by other than electronic funds credit transfers, then the Invoice will be deemed paid on the first Business Day after actual receipt.

25.19 If SAGE requests one or more additional copies of a bill, SAGE will pay **SBC-13STATE** a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

25.20 Each additional copy of any Invoice provided for billing from **SBC-13STATE** CABS billing system will incur charges as specified in the applicable Access Service Tariff FCC Alternate Bill Media Section. Prices for bill media choices reflected in the applicable tariff as ICB will be billed as indicated in Appendix Pricing.

26. DISPUTE RESOLUTION

26.1 Finality of Disputes

26.1.1 Except as otherwise specifically provided for in this Agreement including without limitation, Section 25 above (as to billing disputes), no claim may be brought for any dispute arising from this Agreement and **SBC-13STATE**'s LWC Operations more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

26.2 Alternative to Litigation

26.2.1 Except as may otherwise be provided under any other agreement between the Parties, the Parties desire to resolve disputes arising out of or relating to this Agreement and with respect to all dealings, arrangements, negotiations and/or communications between the Parties relating to this Agreement and **SBC-13STATE**'s LWC Operations 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 and **SBC-13STATE**'s LWC Operations.

26.3 Commencing Dispute Resolution

26.3.1 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 and **SBC-13STATE**'s LWC Operations. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

26.3.1.1 Billing disputes: Billing Disputes between the Parties arising out of or relating to this Agreement shall be resolved in accordance with the procedures set forth in Section 25 above and Section 26below.

26.3.1.2 Informal Dispute Resolution (described below); and

26.3.1.3 Formal Dispute Resolution (described below).

26.4 Informal Resolution of Non-Billing Disputes

26.4.1 Billing disputes which are addressed in Section 25 of this Agreement are not subject to this Informal Resolution Process.

26.4.2 Upon receipt by one Party of notice of a non-billing related dispute by the other Party pursuant to Section 26.3.1 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement and **SBC-13STATE**'s LWC Operations. 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.

26.5 Formal Dispute Resolution

26.5.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 25 above (as to billing disputes) or Section 26.4 above (as to non-billing related disputes), then either Party may invoke the formal Dispute Resolution procedures described in this Section 26.5. Formal Dispute Resolution procedures may not be invoked by either Party with respect to non-billing related disputes earlier than the date that is sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 26.3.1 of this Agreement.

26.5.2 Claims Subject to Mandatory Arbitration

The following claims, if not settled through the informal procedure described in Section 25 above (as to billing disputes) will be subject to mandatory arbitration pursuant to Section 26.6 below:

26.5.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement and **SBC-13STATE**'s LWC Operations in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 25 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 25, the Parties will annualize the actual number of months billed.

26.5.2.2 All Other Claims and Relief. Any claim and any relief other than as specified in Section 26.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate court with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

26.6 Arbitration

26.6.1 Disputes subject to mandatory arbitration (or when arbitration is agreed to by both Parties) 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. All arbitrations will be held in **Dallas, Texas** unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary or otherwise, the Parties agree that 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.

27. NON-DISCLOSURE

27.1 SAGE and **SBC-13STATE** anticipate and recognize that it will come into possession of technical or business information or data about the other Party or their respective customers as a result of this Agreement which will be considered confidential by the other Party. The Parties agree (1) to treat all such information as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. The Parties agree not to disclose confidential information of the other Party or its end users to any person or entity without first securing the written consent of such Party, except as may otherwise be permitted hereunder. The foregoing shall not apply to information which is in the public domain.

27.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section 27, that Party will immediately inform the other Party of the order or

request before such data is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of toll billing records of an individual residence or business end user customer.

27.3. This Section 27.3 will not preclude the disclosure by the Parties of information or data described in this Section to consultants, agents, or attorneys representing the respective Parties, or the Office of the Public Counsel for the State, or appropriate State Commissions or staffs, or FCC Staff, provided that these third-parties are bound by the same or comparable confidentiality requirements as the Parties to this Agreement.

27.4. The provisions of this Section 27.4 will remain in effect notwithstanding the termination of this Agreement, unless agreed to in writing by the Parties.

28. INTERPRETATION/JOINT WORK PRODUCT

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

29. SEVERABILITY

29.1 Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, in light of Section 5 (Scope; Integrated Offering), the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible, in recognition of and consistent with Section 5; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon 180 days written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of LWC End Users to other serving arrangements. In any situation in which the right to terminate under this Section 29.1 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only.

30. NO LICENSE

30.1 Except at otherwise expressly provided in this Agreement (including any 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.

31. INTELLECTUAL PROPERTY

31.1 [** REDACTED **] any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

32. EXPENSES

32.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.

33. CONFLICT OF INTEREST

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

34. END USER FRAUD

34.1 **SBC-13STATE** shall not be liable to SAGE for any fraud associated with any SAGE LWC End User's account, including 1+ IntraLATA toll, ported numbers, except as may be specified in the Appendix ABS.

34.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABS, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.

34.3 In cases of suspected fraudulent activity by an LWC End User or on an LWCAL, at a minimum, the cooperation referenced in Section 34.2 will include SAGE providing to **SBC-13STATE**, upon request, information concerning such LWC End User and any entity or person who terminate services to that LWC End User or LWCAL without paying all outstanding charges. SAGE is responsible for securing the LWC End User's permission to obtain such information.

[move to ABS Appendix]

35. AUDITS

35.1 Subject to the restrictions set forth in Section 27, Non-Disclosure, and except as may be otherwise expressly provided in this Agreement, a Party (the **"Auditing Party"**) may audit the other Party's (the **"Audited Party"**) books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement **("service start date")** for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) 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. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

35.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) and no greater than ninety (90) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit, except by mutual written consent by both Parties to extend.

35.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the sixtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.

35.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's

compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of end users of Audited Party.

35.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

35.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 25 (depending on the **SBC-13STATE** ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

35.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

35.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 35.1. Any additional audit shall be at the requesting Party's expense.

36. COMPLIANCE AND CERTIFICATION

36.1 Each Party shall comply at its own expense with all applicable laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of applicable law.

36.2 Each Party warrants that it has obtained all necessary State certification required in each State covered by this Agreement prior to ordering any LWC or any other offering available hereunder. Upon request, each Party shall provide proof of certification.

36.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

36.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

37. LAW ENFORCEMENT

37.1 **SBC-12STATE** and SAGE shall reasonably cooperate with each other in handling law enforcement requests as follows:

37.1.1 Intercept Devices:

37.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When **SBC-13STATE** receives a request associated with an LWC End User, it shall refer such request to SAGE, unless the request

directs **SBC-13STATE** to attach a pen register, trap-and-trace or form of intercept on **SBC-13STATE** facilities, in which case **SBC-13STATE** shall comply with any valid request.

37.1.2 Subpoenas:

37.1.2.1 If **SBC-13STATE** receives a subpoena for information concerning an LWC End User, it shall refer the subpoena to the requesting entity or person with an indication that SAGE is the responsible company, unless the subpoena requests records for a period of time during which **SBC-13STATE** was the LWC End User's service provider, in which case **SBC-13STATE** will respond to any valid request.

37.1.3 Emergencies:

37.1.3.1 If **SBC-13STATE** receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by its switch for an LWC End User, **SBC-13STATE** will comply with a valid emergency request. However, neither Party shall be held liable for any claims or Losses arising from compliance with such requests on behalf of the LWC End User and SAGE agrees to indemnify and hold **SBC-13STATE** harmless against any and all such claims or Losses.

38. NETWORK MAINTENANCE AND MANAGEMENT

38.1 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.

38.2 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.

38.3 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.

38.4 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. Expansive controls shall be used only when mutually agreed to by the Parties.

38.5 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.

38.6 SAGE shall not use LWC (or any service or facility related thereto or used in combination therewith) in any manner that interferes with or impairs service over any facilities of **SBC-13STATE**, its affiliated companies or other connecting telecommunications carriers, prevents any telecommunications 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, but

only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

39. CUSTOMER INQUIRIES

39.1 Except as otherwise required herein, including but not limited to Appendix OSS, each Party will refer all questions regarding the other Party's services or products directly to the other Party.

39.2 Except as otherwise required herein, including but not limited to Appendix OSS, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

39.2.1 Direct the caller to the other Party if the caller inquires about the other Party's services or products; and

39.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

39.3 Except as otherwise provided in this Agreement, SAGE shall be the primary point of contact for SAGE's LWC End Users with respect to the services SAGE provides such LWC End Users.

40. SURVIVAL

40.1 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. Without limiting the general applicability of the foregoing, the following terms and conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 18, 23, 24, 25 (as to any billing/charges matters hereunder), 26 (as to any disputes hereunder), 27, and 45.

41. PUBLICITY

41.1 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 or business relationships by the other Party or any of its employees in any (i) written, electronic or oral advertising or presentation or (ii) brochure, newsletter, book, electronic database or other written matter of whatever nature, without prior written consent ("Publicity Matters"). Each Party will submit to each other for written approval, prior to publication or use, all Publicity Matters that mention or display one another's name and/or marks or contain symbols, pictures, or 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.

41.2 Notwithstanding Section 41.1, **SBC-13STATE** agrees that SAGE may refer to **SBC-13STATE**, orally and in writing, as SAGE's "preferred underlying network provider." Both Parties agree to cooperate in preparing and releasing a press release on or before April 1, 2004 that, at a minimum, shall state that **SBC-13STATE** and SAGE have entered into an historic 7-year agreement to replace the regulatory mandated UNE-P with a negotiated alternate arrangement that contains commercially reasonable terms and conditions, including price, and that will permit SAGE to pursue a sustainable business model in the local exchange service market. Any other reference to one Party by the other requires written consent of the first party. The Parties shall consult with one another prior to making any announcements or governmental filings relating to the subject matter of this Agreement and will not make any disclosure without the written consent of the other Party, unless such Party reasonably believes that it is required to do so pursuant to the rules of or a listing agreement (or other similar agreement) with a national securities exchange or the NASDAQ National Market (in which case the disclosing Party shall give the other Party hereto reasonable prior notice of and an opportunity to comment on such disclosure).

42. ASSIGNMENT

42.1 SAGE may not assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to SAGE and **SBC-13STATE** and with **SBC-13STATE**'s prior written consent, which consent shall not be unreasonably withheld.

43. NOTICES

43.1 Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative, point of contact or specific manner, shall be: (a) delivered personally; or (b) delivered by express overnight delivery service; or (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 by a method described above in subsections (a), (b) or (c).

43.2 Except as otherwise explicitly provided for in this Agreement, Notices will be deemed given as of the earliest of: (a) the date of actual receipt; or (b) the next Business Day when sent via express overnight delivery service; or (c) five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or (d) 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.

43.3 If the last day on which a notice may be given is not a Business Day, then the last day shall be moved the next Business Day.

43.4 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	SAGE CONTACT	SBC-13STATE CONTACT
NAME/TITLE	Network Services Attention: Kim Frey	Contract Management ATTN: Notices Manager
STREET ADDRESS	805 Central Expressway South, Suite 100	311 S. Akard, 9th Floor Four SBC Plaza
CITY/STATE/ZIP CODE	Allen, TX 75013-2789	Dallas, TX 75202
FACSIMILE NUMBER	214-495-4740	214-464-2006

43.4.1 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.

44. THIRD PARTY BENEFICIARIES

44.1 This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

45. TAXES

45.1 SAGE shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax(es)") imposed on or with respect to LWC including those Taxes the incidence of which is imposed on **SBC-13STATE** other than taxes imposed on the income of **SBC-13STATE**. SAGE shall reimburse **SBC-13STATE** for the amount of any such Taxes that **SBC-13STATE** is required to pay or collect. SAGE agrees to indemnify and hold harmless **SBC-13STATE** for any costs incurred by **SBC-13STATE** as a result of actions taken by the applicable taxing authority to collect the Tax from **SBC-13STATE** due to the failure of SAGE to pay or collect and remit any Tax to such authority. Nothing shall prevent **SBC-13STATE** from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills SAGE for such Tax, or (2) it collects the Tax from SAGE. Notwithstanding anything in this Agreement to the contrary, SAGE shall be liable for and **SBC-13STATE** 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.

45.1.1 The Parties acknowledge that SAGE shall not be required to pay any such Taxes in duplicate, i.e., if SAGE has already paid to a taxing authority, and **SBC-13STATE** also pays the same Taxes in

duplicate, then **SBC-13STATE** will be responsible to gain the appropriate reimbursement from the taxing authority and not SAGE.

45.2 To the extent a purchase of LWC is claimed by SAGE to be for resale and, as such, SAGE claims the purchase is subject to tax exemption, SAGE shall furnish **SBC-13STATE** a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to SAGE for any period prior to the date that SAGE presents a valid certificate. If applicable law excludes or exempts a purchase of LWC provided under this Agreement from a Tax, but does not also provide an exemption procedure, then **SBC-13STATE** will not collect such Tax if SAGE (a) furnishes **SBC-13STATE** with a letter signed by an officer of SAGE claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies **SBC-13STATE** with an indemnification agreement, reasonably acceptable to **SBC-13STATE**, which holds **SBC-13STATE** harmless from any Tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.

45.3 With respect to any Tax or Tax controversy covered by this Section, SAGE 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. SAGE will ensure that no lien is attached to any asset of **SBC-13STATE** as a result of any contest. SAGE 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 **SBC-13STATE** shall be refunded to **SBC-13STATE**.

45.4 If a Party is assessed by a taxing authority or jurisdiction any Tax which it has also paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.

46. NON-WAIVER

46.1 The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times, in full force and effect, unless terminated or amended as provided for herein.

47. DISCLAIMER OF WARRANTIES

47.1 **SBC-13STATE** MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO OFFERINGS PROVIDED HEREUNDER. ADDITIONALLY, **SBC-13STATE** ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY SAGE OR ANY OTHER PERSON OR ENTITY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

48. RELATIONSHIP OF THE PARTIES

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

49. AMENDMENTS AND MODIFICATIONS

49.1. Except as otherwise provided for in this Agreement, 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 each Party. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

50. AUTHORITY

50.1 Each of the **SBC-13STATE** 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-13STATE** 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-13STATE** ILEC. Each of the **SBC-13STATE** ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

50.2 SAGE Telecom, Inc. represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Sage Telecom, Inc. represents and warrants that it is the General Partner of Sage Telecom of Texas, L.P., a duly organized partnership under the laws of the State of Texas.

50.3 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.

51. COUNTERPARTS

51.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

52. PRESERVATION OF LEGAL POSITIONS

52.1 Except as specifically modified by this Agreement with respect to their mutual obligations herein, neither Party relinquishes, and each Party instead fully reserves, any and all legal rights that it had, has and may have to assert any position with respect to any of the matters set forth herein before any state or federal administrative, legislative, judicial or other legal body.

52.2 It is the express intent of the Parties that this Agreement is a private, commercial arrangement that is not subject to Sections 251 and/or 252, or any similar state law. However, in the event that this Agreement is subjected to any of the foregoing and/or is terminated or invalidated pursuant to Sections [1.3], 18.6, and/or 18.7, it is the express intent and agreement of the Parties that neither of them shall be deemed or otherwise determined to have waived, and each Party shall have hereby expressly reserved, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in any relevant interconnection agreement(s) (including intervening law rights asserted by either Party via written notice predating this Agreement) 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 any interconnection agreement(s) between them as of the Effective Date of this Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et. Al ("USTA") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003; 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). The foregoing shall apply with

respect to those states, and shall apply retroactively to prior to the effectiveness of this Agreement, where this Agreement is (i) subjected to Sections 251 and/or 252, or any similar state law, but not terminated or invalidated as may be permitted herein, and then applicable as to any person or entity not a Party to this Agreement, and/or (ii) is so terminated or invalidated This provision shall be liberally construed in accordance with its intent, so as to ensure that the respective positions of the Parties with respect to any such orders, decisions, legislation or proceedings and any remands thereof (including under any relevant interconnection agreement(s)), shall not have been affected as a result of or otherwise arising from this Agreement in those states where this Agreement is subjected to Sections 251 and/or 252, or any similar state law, or is so terminated or invalidated.

53. ENTIRE AGREEMENT

53.1 The terms and conditions, including pricing, contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, and other documents or instruments referred to herein and incorporated into this Agreement by reference constitutes 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 during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. 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.

PRIVATE COMMERICAL AGREEMENT FOR LOCAL WHOLESALE COMPLETE

Please indicate the SAGE OCN & ACNA next to the state(s) in which SAGE is authorized to do business and in which SAGE is requesting to purchase LWC:

	OCN #	ACNA		OCN #	ACNA
ARKANSAS	8000	SGZ	MISSOURI	9078	SGZ
CALIFORNIA	9239	SGZ	OHIO	777A	SGZ
ILLINOIS	9270	SGZ	OKLAHOMA	2237	SGZ
INDIANA	9846	SGZ	WISCONSIN	9813	SGZ
KANSAS	5839	SGZ	TEXAS	8767	SGZ
MICHIGAN	8152	SGZ			

Signatures

Sage Telecom of Texas L.P., and Sage Telecom, Inc.

by Sage Telecom, Inc., on its own behalf and as General Partner of Sage Telecom of Texas, L.P.

Signature:_____

Name: Dennis M. Houlihan

Title: Chairman of the Board
President and Chief Executive Officer

Date: April 21, 2004

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, The Ohio Bell Telephone Company d/b/a SBC Ohio, and Wisconsin Bell Inc. d/b/a SBC Wisconsin, Nevada Bell Telephone Company d/b/a SBC Nevada, Pacific Bell Telephone Company d/b/a SBC California, 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/or SBC Texas

by SBC Telecommunications, Inc., the authorized agent of each

Signature:_____

Name: David A. Cole

Title: President - Industry Markets

Date: April 21, 2004

APPENDIX LIDB AND CNAM

REDACTED

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