

# **EXHIBIT 1**



Jim Lamoureux  
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September 29, 2005

By Messenger

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RECEIVED

SEP 29 2005

Federal Communications Commission  
Office of Secretary

Re: **Submission of Contract Pursuant to 47 U.S.C. § 211 and 47 C.F.R. § 43.51**

Dear Ms. Dortch:

Pursuant to § 211 (a) of the Communications Act of 1934, as amended, and § 43.51 of the Commission's rules, SBC hereby files the attached agreement between SBC-13 State and West Telcom Inc., regarding the companies' private commercial agreement for Local Wholesale Complete. If you have any questions, please do not hesitate to contact me at (202) 326-8895.

Sincerely,

/s/ Jim Lamoureux  
Senior Counsel  
SBC Services, Inc.

# **COMMERCIAL AGREEMENT**

**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,  
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,  
Wisconsin Bell, Inc. d/b/a SBC Wisconsin**

**and**

**West Telcom, Inc.**

**ATTACHMENT  
LOCAL WHOLESALE COMPLETE**

occurring, to investigate them where warranted, and, where corrective action is appropriate, to explore options to resolve the matter in question. Nothing in this Attachment requires either Party to obtain from the other the right to unilaterally conduct its own investigations, or prohibits either Party from pursuing alternatives and/or remedial action on its own.

### 13. INTERCARRIER COMPENSATION RESPONSIBILITIES

- 13 1 For purposes of traffic compensation matters, CARRIER and SBC-13STATE agree that CARRIER shall be considered a facilities-based local exchange carrier in its use of LWC and LWCALs in the same manner as if CARRIER were using the "Unbundled Network Element-Platform" or "UNE-P" (as such has been understood by the Federal Communications Commission) to provide local telephone service to the LWC End Users. CARRIER shall be responsible for any and all compensation owed for traffic originating from, or terminating to, CARRIER's LWCALs. Traffic compensation between CARRIER and SBC-13STATE is expressly not addressed in this Agreement (including without limitation this Attachment).
- 13 2 CARRIER shall be solely responsible for establishing traffic compensation arrangements with third parties, including other telecommunications carriers (e.g., ILECs, interexchange carriers, CMRS, CLECs) for traffic originated from, or terminated to, CARRIER's LWCALs. The foregoing includes exchange access charges and reciprocal compensation charges. CARRIER shall indemnify, defend, and hold harmless SBC-13STATE against any charges, claims, damages, liabilities and expenses from third parties ("Compensation Losses") arising from traffic originated from and/or terminated to any CARRIER LWCAL. SBC-13STATE may provide information on any LWC-related traffic to other telecommunications carriers or any third party as appropriate to resolve traffic issues, including without limitation those involving compensation. CARRIER agrees that SBC-13STATE is not required to function as a billing intermediary for billing and payment of LWC-related traffic exchanged between CARRIER and any third party carrier and/or any other third party. Under no circumstances will SBC-13STATE be required to pay any compensation to any third party carrier or to any other third party including, without limitation, a third party carrier for termination of traffic originated from, or terminated to, a LWCAL Number. If needed and to the extent SBC-13STATE has any rights to third party compensation rights with respect to any such traffic and traffic compensation matters, SBC-13STATE hereby assigns any such third party compensation rights to CARRIER.
- 13 3 Under no circumstances shall SBC-13STATE be liable to CARRIER or any third party for any Compensation 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 an LWCAL that was delivered to SBC-13STATE for termination to an LWCAL over local interconnection trunk groups from a third party carrier.
- 13 4 Nothing in the Agreement (including without limitation this Appendix) affects the right of SBC-13STATE to charge any telecommunications carrier or other entity for any entrance facilities and/or interconnection facilities provided by SBC-13STATE.

### 14. OPERATIONAL ISSUES

- 14 1 SBC-13STATE and CARRIER agree to mutually work on evolving the LWC ordering processes to achieve an objective of Flow Through level of 95% of Local Service requests (LSRs) for LWC.
- 14 2 Ordering and Trouble Reporting Interfaces must be electronic via existing and currently supported SBC-13STATE versions of OSS interfaces. CARRIER must at all times use the then-most current version of the *Electronic Bonding Trouble Administration* ("EBTA") GUI and/or the EBTA APP to APP interfaces offered by SBC-13STATE for submitting trouble tickets, including as such interfaces may be modified, updated and/or replaced from time to time.

### 15. LWC-SPECIFIC EVENTS OF DEFAULT

- 15 1 The following shall also be considered an "Event of Default" under the Agreement:

## APPENDIX LWC DUF

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## APPENDIX LWC DUF (DAILY USAGE FILE)

### 1. INTRODUCTION AND SCOPE

- 1.1 This Appendix is an integral part of the Private Commercial Agreement for Local Wholesale Complete (LWC) between SBC-13STATE and CARRIER, and sets forth additional terms and conditions for Daily Usage File (DUF) of message data provided as part of LWC by the applicable SBC-13STATE ILEC. The DUF terms and conditions provided under the Agreement and this Appendix are only available as part of and use in conjunction with LWC. This Appendix is only applicable when CARRIER is purchasing LWC, and then only as part of the LWCAL being provided (e.g., not for use separately, or with respect to any other offering by SBC-13STATE)

### 2. DAILY USAGE FILE (DUF)

- 2.1 If and to the extent technically available and consistent with the availability and provision of usage records previously associated with basic analog UNE-P, SBC-13STATE will provide CARRIER a specific Daily Usage File ("DUF") containing message data recorded by SBC-13STATE from CARRIER customer local and Access usage of Basic Analog Switching Functionality and non-dedicated transport on LWCALs, and alternately billed calls being billed to CARRIER's LWC Numbers. Such recorded message data will be provided by SBC-13STATE in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each SBC-13STATE ILEC. Procedures and processes for implementing the interfaces with SBC-13STATE will be included in implementation requirements documentation.
- 2.2 To the extent not performed prior to this Agreement, to establish file transmission for the Daily Usage File, CARRIER must provide to SBC-13STATE a separate written request for each state no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 2.3 Unless otherwise specified herein with respect to Alternately Billed Service Calls, call detail for LEC-carried calls that are alternately billed to CARRIER's LWC Numbers will be forwarded to CARRIER as rated call detail on the DUF.
- 2.4 Interexchange call detail on LWC Numbers that is forwarded to SBC-13STATE for billing, which would otherwise be processed by SBC-13STATE for its retail end users, will be returned to the IXC and will not be passed through to CARRIER. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a CARRIER account. Billing for information/enhanced services and other ancillary services traffic will be passed through when SBC-13STATE records the message.
- 2.5 Neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever with respect to DUFs or message data associated with LWC. A Party shall not be liable for its inability to meet the terms of this Section where such inability is caused by failure of the other Party to comply with its obligations. Each Party is obliged to use its best efforts to mitigate damages and to inform the other of issues and concerns regarding DUFs and/or message data so that analysis and investigation can occur and, if warranted, action taken to address and resolve any such issues or concerns. Included within the types of issues and/or concerns would be those that might indicate CARRIER is not being sent the volume and/or type of records that it expects (e.g., anomalous trends, significant usage records shifts/usage changes in short period of time lack of record types, record mismatches, the possibility of "missing" records). The Parties agree to work cooperatively to resolve these issues.
- 2.6 When SBC-13STATE is notified that, due to its error or omission, incomplete message data has been provided to CARRIER, upon written request from CARRIER, SBC-13STATE will make reasonable efforts to locate and/or recover the message data recorded no earlier than sixty (60) calendar days from

the date the details initially were made available to CARRIER, and provide it to CARRIER at no additional charge. Such requests to recover the message data must be made within thirty (30) calendar days from the date the details initially were made available to CARRIER, or that CARRIER should have reasonably known or had reason to know of any such error or omission. If such written request is not received by SBC-13STATE within thirty (30) calendar days, SBC-13STATE shall have no further obligation to recover the data and shall have no further liability to CARRIER.

- 2.7 Except as provided in Section 2.8, SBC-13STATE shall have no further liability to CARRIER beyond its obligation to make reasonable efforts to locate and/or recover the incomplete message data, for the data recorded no earlier than the previous sixty (60) calendar days.
- 2.8 If, despite timely written request or notification by CARRIER, message detail is lost or unrecoverable as a direct result of SBC-13STATE having lost or damaged tapes or incurred system outages while performing recording and/or processing of message detail, SBC-13STATE and CARRIER will estimate the volume of lost messages and associated revenue based on reciprocal compensation and Access rates available herein for the average intrastate, interstate and/or local call. In such events, SBC-13STATE's liability to CARRIER shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost compensation associated with the lost message detail for a period of time no greater than the previous sixty (60) calendar days. SBC-13STATE shall have no obligation or liability for unrecoverable message detail beyond the previous sixty (60) calendar days.
- 2.9 SBC-13STATE will not be liable for any costs incurred by CARRIER when CARRIER is transmitting Return DUF files via data lines and a transmission failure results in the non-receipt of data by SBC-13STATE.
- 2.10 CARRIER also agrees to release, defend, indemnify and hold harmless SBC-13STATE from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by SBC-13STATE employees and equipment associated with provision of any message data or other usage data as part of or in conjunction with LWC. This includes, but is not limited to lawsuits and complaints arising from disclosure of any customer specific information associated with either the originating or terminating telephone numbers or calls to a LWCAL or LWC Number.