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February 18, 2005

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Re: In the matter, on the Commission's Own Motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Federal Telecommunications Act of 1996.
MPSC Case No. U-12320

Dear Ms. Kunkle:

Enclosed please find an original and four (4) copies of LDMI Telecommunications, Inc.'s Objections to SBC Accessible Letters Notifying that SBC Michigan will Unilaterally Discontinue Tariffs and Certain UNE Offerings Under Existing Interconnection Agreements, in the above-captioned proceeding. Proof of Service upon the Parties of Record is also enclosed. These pleadings have been filed electronically with the Michigan Public Service Commission's Electronic Case Filing System.

Very truly yours,

CLARK HILL PLC

Haran C. Rashes

HCR:met
Enclosure

cc: Parties of Record

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16839/078741

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's Own)	
Motion, to consider Ameritech Michigan's)	Case No. U-12320
compliance with the competitive checklist in)	
Section 271 of the Federal Telecommunications)	
Act of 1996.)	

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
LETTERS NOTIFYING THAT SBC MICHIGAN WILL UNILATERALLY
DISCONTINUE TARIFFS AND CERTAIN UNE OFFERINGS UNDER EXISTING
INTERCONNECTION AGREEMENTS**

NOW COMES LDMI Telecommunications, Inc. ("LDMI"), by its attorneys, Clark Hill PLC, and files its Objections to SBC Accessible Letters CLECAM05-037, CLECALL05-017, CLECALL05-018, CLECALL05-019, and CLECALL05-020 issued on February 10 and 11, 2005.

In its November 7, 2002 Opinion and Order in this proceeding, this Commission provided that, if SBC Michigan, f/k/a Ameritech Michigan, ("SBC") attempted to withdraw any UNE combinations from tariffs, Competitive Local Exchange Carriers ("CLECs") would have two weeks to file objections. The following constitutes LDMI's objections to SBC's notices unilaterally withdrawing certain offerings.

I. SBC'S UNILATERAL ACTIONS HAVE BEGUN

On February 10 and 11, 2005, SBC Michigan unilaterally issued the following Accessible Letters to CLECs:

- **Accessible Letter CLECAM05-037, Issued February 10, 2005.**¹
This Accessible Letter, a copy of which is attached as Exhibit 1, indicates that

¹ Attached hereto as Attachment A.

SBC will unilaterally withdraw its state UNE tariffs “in the near future” and “beginning as early as March 10, 2005.”

- **Accessible Letter CLECALL05-017, Issued February 11, 2005.**²
This Accessible Letter announces unilateral withdrawal of services. Specifically, SBC states that, as of March 11, 2005, CLECs may not obtain access to local circuit switching. SBC announces CLECs may no longer place, and SBC will no longer provision, new, migration or move LSRs for mass market local switching and UNE-P.
- **Accessible Letter CLECALL05-018, Issued February 11, 2005.**³
This Accessible Letter announces how it will treat the CLECs’ embedded base of customers based on SBC’s own (and sole) reading of the TRO remand order, and provides a unilateral ready-to-sign amendment basically on a take it or leave it basis with a deadline of February 21, 2005.
- **Accessible Letter CLECALL05-019, Issued February 11, 2005.**⁴
This Accessible Letter announces it will no longer accept new, migration, or move LSRs for DS1 or DS3 high capacity loops in excess of certain caps, for DS1 or DS3 dedicated transport in excess of certain caps, for dark fiber loops, or for dark fiber dedicated transport between certain wire centers.
- **Accessible Letter CLECALL05-020, Issued February 11, 2005.**⁵
This Accessible Letter announces what it calls a transition plan for unbundled high capacity loops and unbundled dedicated transport, and has a take it or leave it amendment attached with instructions to send it in by March 10, 2005.

II. SBC’S UNILATERAL ACTION DOES NOT COMPLY WITH THIS COMMISSION’S ORDERS OR WITH CHANGE OF LAW PROVISIONS IN INTERCONNECTION AGREEMENTS

A. This Commission’s Orders Have Not Been Complied With In The Issuance Of The Accessible Letters

In its November 7, 2002 Opinion and Order in this proceeding, this Commission provided a specific procedure should SBC Michigan attempt to withdraw any UNE combinations

² Attached hereto as Attachment B.

³ Attached hereto as Attachment C.

⁴ Attached hereto as Attachment D.

⁵ Attached hereto as Attachment E.

offered by tariff as required by the Commission's Order. On page 15 of the Order, the Commission specifically directed that:

“C. Ameritech Michigan shall not withdraw or amend tariffs that comply with this order except in accordance with the process described in this order.”

The procedure described in the Order was set forth at page 7. With respect to the procedure, the Commission explicitly stated:

“Further, before Ameritech Michigan may limit or withdraw the availability of any combination, including the UNE-P, to any provider, it must comply with this process.”

That process adopted by the Commission provides for several steps that SBC must take prior to the withdrawal of any UNE combinations offered by tariff:

1. SBC must provide 30 days' notice of any proposed change to all CLECs that are purchasing UNE combinations.
2. The CLECs will have two weeks to file objections with the Commission.
3. If the Commission concludes, on its own motion or on the basis of the objections, that the change should not take effect without further proceedings, it will issue an order commencing a proceeding, and SBC Michigan may not implement the change until the Commission orders otherwise. In the absence of an order commencing a proceeding (either a collaborative discussion or contested case) within that period, SBC Michigan may implement the change at the conclusion of the notice period.

The Commission went on to state:

“The parties remain free to address in their Interconnection Agreements and amendments the conditions under which prices or other terms may change, and those agreements and amendments will be given effect according to their terms. If the parties have

agreed to adopt a pricing schedule, the agreement or amendment will determine when the pricing schedule can be changed.”⁶

In Case No. U-14139, on June 3, 2004, the Commission made a similar ruling with regard to Interconnection Agreements. SBC Michigan made commitments that it in no way would fail to comply with change of law provisions in existing Interconnection Agreements. The Commission accepted SBC Michigan’s word, and specifically directed:

“The Commission concludes that unless the parties appropriately amend their contracts as provided in their change of law provisions, the promised status quo should be maintained until the Commission orders otherwise.”⁷

As the Commission is well aware, there is currently a set of consolidated cases, Case Nos. U-14303, U-14305, and U-14327, which are addressing if and how existing Interconnection Agreements are to be altered, and what the status of various UNEs should be considering the FCC’s December 15, 2004 action (as released on February 4, 2005) and state law. These cases are still in the comment stage. On February 10, 2005, on or before the date which SBC issued the Accessible Letters, the Commission asked for additional comments in these consolidated proceedings “because the new rules issued by the FCC on February 4, 2005 appear to have a

⁶ *In the matter, on the Commission’s Own Motion, to consider Ameritech Michigan’s compliance with the competitive checklist in Section 271 of the Federal Telecommunications Act of 1996*, MPSC Case No. U-12320, Opinion and Order, Nov 7, 2002, pp 7-8.

⁷ *In the matter of a request for declaratory ruling, or in the alternative, complaint of AT&T Communications, et al. against Michigan Bell Telephone Company d/b/a SBC Michigan, Verizon North Inc., and Contel of the South Inc. d/b/a Verizon North Systems, for an order requiring compliance with the terms and conditions of Interconnection Agreements*, MPSC Case No. U-14139, Opinion and Order, June 3, 2004, p 5.

significant effect on the outcome of this proceeding.”⁸ Additional Comments in that proceeding are now due on February 24, 2005, with Reply Comments due on March 3, 2005.⁹

Not only does the Commission’s have a process for changing tariffs and Interconnection Agreement commitments, which require that the Interconnection Agreements be properly amended, pursuant to approval by the Commission, and the tariffs be properly changed, but the U.S Court of Appeals Sixth Circuit has also ruled that contractual provisions in Interconnection Agreements control regardless of SBC’s obligations under Section 251 or 252 of Federal Telecommunications Act of 1996 (“FTA”).¹⁰ In *Michigan Bell Tel Co v MCIMetro Access Transmission Serv.*,¹¹ the Sixth Circuit stated as follows:

“According to the Federal Communications Commission, as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 Act, state regulations are not preempted. . . . In *Law Offices of Curtis V Trinko v Bell Atlantic Corp*, 305 F.3d 89, 102 (2nd Cir. 2002), the Court of Appeals for the Second Circuit stated that the Act intended for incumbent carriers to be governed by the Interconnection Agreement rather than general duties put forth in subsections 251(b) and (c). These two subsections require an incumbent to negotiate agreements and provide interconnection, but once an agreement is approved, these general duties do not control, lest carriers have diminished incentive to enter Interconnection Agreements. 305 F3d at 103.”¹²

⁸ *In the matter of the application of competitive local exchange carriers to initiate a Commission investigation of issues related to the obligation of incumbent local exchange carriers in Michigan to maintain terms and conditions for access to unbundled network elements or other facilities used to provide basic local exchange and other telecommunications services in tariffs and Interconnection Agreements approved by the MPSC, pursuant to the Michigan Telecommunications Act, the Telecommunications Act of 1996, and other relevant authority*, MPSC Case Nos. U-14303, U-14305, U-14327, Order and Additional Notice of Opportunity to Comment, Feb 10, 2005, p 4.

⁹ *Id.*

¹⁰ 47 USC §§ 251, 252.

¹¹ 323 F3d 348 (6th Cir 2003).

¹² *Id* at 359.

Thus, SBC Michigan is under an obligation to follow a specified procedure in withdrawing tariffs, and may not unilaterally act to de-list UNEs. This SBC has utterly failed to do in unilaterally announcing changes in its Accessible Letters.

B. SBC Has Not Complied With ICA Change of Law Provisions.

While SBC's Accessible Letters claim that SBC is no longer required to provide certain UNEs or UNE combinations, until SBC's Interconnection Agreement with MCI is amended (with such amendment approved by the Commission), SBC's contractual obligations have not changed.

The SBC/LDMI Interconnection Agreement, for example, has specific change of law provisions. LDMI adopted the AT&T Agreement,¹³ which provides at Sections 29.3 and 29.4:

29.3 Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment of the Act, or any legally binding legislative, regulatory, or judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185 or any applicable Commission order or arbitration award purporting to apply the provisions of the Act (individually and collectively, an "**Amendment to the Act**"), either Party may by providing written notice to the other Party require that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment to the Act relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges on a retroactive basis; including the right to

¹³ *In the matter of the joint requests for Commission approval of interconnection agreements and amendments*, MPSC Case No. U-13725, Order, Mar 12, 2003. For a complete copy of the AT&T Interconnection Agreement *see*, <http://www.sbc.com/search/regulatory.jsp?category=INTERCONNECTION_AGREEMENTS/MICHIGAN/ATT_COMMUNICATIONS_OF_MICHIGAN_INC>

seek a surcharge before the applicable regulatory authority. In the event that such new terms are not renegotiated within ninety (90) days after such notice, or if at any time during such 90-day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, the dispute shall be resolved as provided in **Section 28.3** of this Agreement. For purposes of this Section 29.3, legally binding means that the legal ruling has not been stayed, no request for a stay is pending, and if any deadline for requesting a stay is designated by statute or regulation, it has passed. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which became effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which became effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Section 29.3.

29.4 Regulatory Changes. If any legally binding legislative, regulatory, judicial or other legal action (other than an Amendment to the Act, which is provided for in Section 29.3) materially affects any material term of this Agreement or materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, upon written notice, require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement. In the event that such new terms are not renegotiated within ninety (90) days after such notice, or if at any time during such 90-day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, the dispute shall be resolved as provided in **Section 28.3** of this Agreement.

For purposes of this Section 29.4, legally binding means that the legal ruling has not been stayed, no request for a stay is pending, and if any deadline for requesting a stay is designated by statute or regulation, it has passed.

The Accessible Letters do not even purport to comply with this procedure. The Accessible Letters purport only to comply with good faith negotiations, but a unilateral imposition of a take it or leave it amendment that must be executed as is by March 10, 2005, when the Interconnection Agreement clearly calls for a 90-day renegotiation period, is the antithesis of good faith negotiations. SBC cannot even begin to claim that its unilaterally imposed procedure complies with either its Interconnection Agreements or with this Commission's orders.

III. SBC MICHIGAN MUST CONTINUE TO HAVE A STATE UNE TARIFF.

SBC Michigan must still maintain and honor its Michigan UNE tariffs. In Accessible Letter CLECAM05-037, SBC purportedly relies on two cases from the Sixth Circuit, neither one of which is on point. SBC has also ignored the Sixth Circuit case most on point, which allows the Commission to require SBC to have a wholesale tariff on file with the Commission.

In *Michigan Bell Telephone Co. v. MCIMetro Access Transmission*,¹⁴ the Sixth Circuit specifically upheld the ability of MCI to order from the SBC wholesale tariff because MCI and SBC had also entered into an Interconnection Agreement. Based on this case, the law applicable in Michigan is quite clear that SBC must maintain its tariffs and that CLECs who have entered into an Interconnection Agreement with SBC are able to order out of the SBC tariff unless they are specifically prohibited from doing so based on the terms and conditions of their Interconnection Agreement.

¹⁴ 323 F3d 348,359 (6th Cir 2003).

SBC's cited cases, *Verizon North, Inc. v. Strand, et al.*,¹⁵ and *Verizon North, Inc. v. Strand, et al.*,¹⁶ are most certainly not on point and do not support SBC's proposed policy of withdrawing and refusing to honor the terms of its tariffs. In *Verizon I*, the Sixth Circuit ruled that where Verizon in Michigan had not yet entered into an Interconnection Agreement with any CLEC, it was improper for the Commission to order Verizon to issue a wholesale tariff since this would allow carriers to bypass the negotiation and arbitration process for interconnection established by the FTA. *Verizon I* was later distinguished by the Sixth Circuit in *Michigan Bell*, in which it affirmed a Commission ruling allowing MCI to order services out of the SBC tariff where MCI had an Interconnection Agreement with SBC.

Nor does *Verizon II* support SBC's position. In *Verizon II*, the Sixth Circuit ruled that where an Interconnection Agreement did not exist between a CLEC and Verizon, the CLEC could not rely on its tariff to bill reciprocal compensation charges to Verizon. Again, in *Verizon II* there was no Interconnection Agreement, thus the parties could not rely on a tariff. To the contrary, in the instant situation, an Interconnection Agreement between LDMI and SBC does exist. And, as was the case in the MCI case, LDMI's Interconnection Agreement also allows LDMI to purchase services out of tariff. Accordingly, *Verizon I* and *Verizon II* cases are not on point, and LDMI can order from the SBC tariff and SBC must provision these orders.

IV. SBC MICHIGAN MUST ALSO PROVIDE THE UNES UNDER SECTION 271 AND UNDER STATE LAW

LDMI has joined with the arguments of the CLECs in dockets U-14303, U-14305, and U-14327, in arguing that SBC's obligations to provide UNEs also arise under Section 271, under the terms of the Section 271 authority granted to SBC, and independently under state law. Those

¹⁵ 309 F3d 935 (6th Cir 2002) ("*Verizon I*").

¹⁶ 367 F3d 577 (6th Cir 2004) ("*Verizon II*")

arguments are equally applicable here. Those arguments will not be repeated here, but are adopted by reference.¹⁷

It is important to note here that the FCC has not preempted any applicable state law. The D.C. Circuit has held that the FCC has not preempted any state law relating to interconnection and unbundling, and that any party that believes that a state unbundling obligation is inconsistent with section 251 must seek a declaratory ruling from the FCC:¹⁸

“The state petitioners argue that the Order improperly preempts state unbundling regulations that exist independent of the Commission's federal unbundling regulations enacted pursuant to Section 251. Specifically, the state petitioners point to ¶ 195 of the Order, which allows “[p]arties that believe that a particular state unbundling obligation is inconsistent with the limits of section 251(d)(3)(B) and (C) ” to seek a declaratory ruling from the Commission.... The state petitioners' challenge to the preemptive scope of the Order is not ripe. The general prediction voiced in ¶ 195 does not constitute final agency action, as the Commission has not taken any view on any attempted state unbundling order.”¹⁹

The FCC was also quite clear in its September 2004 brief to the Supreme Court in opposition to the petitions for *certiori* from the *USTA II* decision that it has not preempted any state law on unbundling:

“Contrary to California’s suggestion, the *Triennial Order* does not include final FCC action preempting any state line sharing rule or other unbundling requirement. In paragraph 195 of the *Triennial Order*, the Commission invited parties to seek declaratory rulings from the FCC if they believe that a particular state unbundling obligation is inconsistent with the limits on state authority in 47

¹⁷ See, MPSC Electronic Case Filings System, MPSC Case No. U-14303, Docket Items: 0001, 0033, 0035, 0045, and 0047. <<http://efile.mpsc.cis.state.mi.us/efile/docs/14303/0001.pdf>>; <<http://efile.mpsc.cis.state.mi.us/efile/docs/14303/0033.pdf>>; <<http://efile.mpsc.cis.state.mi.us/efile/docs/14303/0035.pdf>>; <<http://efile.mpsc.cis.state.mi.us/efile/docs/14303/0045.pdf>>; and, <<http://efile.mpsc.cis.state.mi.us/efile/docs/14303/0047.pdf>>.

¹⁸ *United States Telecom Ass’n v FCC*, 359 F3d 554 (DC Cir 2004) (“*USTA II*”).

¹⁹ *Id* at 594.

U.S.C. 251(d)(3) and the FCC's rules. Pet. App. 272a. . . . But the Commission did not preempt any state rules, and it is uncertain whether the FCC ever will issue a preemption order of this sort in response to a request for declaratory ruling.”²⁰

The most important point here, however, is that this topic is the subject of an existing case before this Commission.²¹ The Commission should not allow SBC to get away with this unilateral and blatant attempt to skirt the Commission's actions.

V. SUMMARY AND RELIEF REQUESTED

Since it is not disputed that both the current LDMI-SBC Michigan Interconnection Agreement and SBC's tariff allow for LDMI to obtain at current rates everything that SBC is attempting to take away through the Accessible Letters, it is clear that SBC is acting contrary to federal law, state law, the express provisions of its Interconnection Agreement with LDMI, and Michigan law on tariff modifications. To the extent SBC desires to create an amendment to the LDMI-SBC Interconnection Agreement based on any change of law, it is required to go through the change of law or intervening law process of the Interconnection Agreement. Similarly, to the extent SBC desires to create changes to its wholesale tariffs, it must follow the procedure established by this Commission in Case No. U-12320. By issuing the Accessible Letters, SBC is clearly violating its prior commitment to follow the procedures for changing tariffs and is violating the change of law provisions of the LDMI-SBC Interconnection Agreement.

²⁰ Brief for the Federal Respondents in Opposition, *on Petitions for a Writ of Certiorari from USTA II*, at page 20.

²¹ *In the matter of the application of competitive local exchange carriers to initiate a Commission investigation of issues related to the obligation of incumbent local exchange carriers in Michigan to maintain terms and conditions for access to unbundled network elements or other facilities used to provide basic local exchange and other telecommunications services in tariffs and Interconnection Agreements approved by the MPSC, pursuant to the Michigan Telecommunications Act, the Telecommunications Act of 1996, and other relevant authority*, MPSC Case Nos. U-14303, U-14305, U-14327

This Commission has already ruled in this proceeding that it can issue an order preventing SBC from implementing changes until the Commission orders otherwise, and in doing so, may establish a contested case proceeding. The Commission should immediately issue such an order barring SBC from implementing the changes set forth in its Accessible Letters until further order of the Commission. Although the Commission need not make a ruling in the present docket as to whether SBC has continuing unbundling obligations under federal or state law different from what SBC proposes in its Accessible Letters, these issues should be included in the docket the Commission establishes and should be resolved in that docket.

Therefore, LDMI Telecommunications, Inc. respectfully requests that the Commission issue an Order:

- 1.) establishing a proceeding to address SBC's proposed tariff changes;
- 2.) prohibiting SBC from withdrawing its wholesale tariffs until the completion of this other proceeding;
- 3.) compelling SBC to honor its tariffs and Interconnection Agreements as they presently exist;
- 4.) barring SBC from enforcing or implementing the Accessible Letters at issue here until it obtains a further order from this Commission to the contrary;
- 5.) ordering SBC to continue to accept and provision new, migration, or move LSRs for Mass Market UNE-P until a further Commission order to the contrary;
- 6.) ordering SBC to continue to accept and provision new, migration, or move LSRs for certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until a further order from this Commission to the contrary; and

7.) prohibiting SBC from increasing the rates it charges for UNE-P, DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until a further Commission order to the contrary.

Respectfully submitted,

CLARK HILL PLC

By:

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LDMI Telecommunications, Inc.

Date: February 18, 2005

STATE OF MICHIGAN
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In the matter, on the Commission's Own)
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Case No. U-12320

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
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DISCONTINUE TARIFFS AND CERTAIN UNE OFFERINGS UNDER EXISTING
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ATTACHMENT A

SBC Accessible Letter CLECAM05-037



Date: **February 10, 2005**

Number: **CLECAM05-037**

Effective Date: **2-11-05**

Category: **UNE**

Subject: **IL, IN, MI and WI UNE State Tariff Withdrawal**

Related Letters: **N/A**

Attachment: **N/A**

States Impacted: **Illinois, Michigan, Indiana, Wisconsin**

Response Deadline: **ASAP**

Contact: **SBC Account Manager**

Conference Call/Meeting: **N/A**

Several Federal Court of Appeals decisions have concluded that an incumbent local exchange carrier (ILEC) cannot be required by a state to tariff the terms and conditions of its wholesale offerings that are required pursuant to § 251 of the Telecommunications Act of 1996 (the "1996 Act").¹ Rather, these courts have found that the terms and conditions for such elements and services are properly subject to the negotiation and arbitration requirements of 47 U.S.C. §§ 251-252. In accordance with these decisions, and in an effort to simplify its wholesale offerings consistent with its obligations under federal law, the SBC ILECs in Illinois, Indiana, Michigan and Wisconsin ("SBC") have or soon will be notifying the respective state regulatory commissions that each will be withdrawing its state UNE tariffs in the near future.²

If you have an Interconnection Agreement ("ICA") with SBC but are purchasing products from the UNE tariffs—and would like to continue purchasing said products after the tariffs are withdrawn—SBC will agree to negotiate an amendment to your ICA to incorporate such products that SBC is required to provide as and to the extent required by federal law. SBC may contact you regarding any such amendments but has no obligation to do so. Rather, you should identify the specific tariff products that you want to incorporate into your ICA. To the extent that you do not amend your ICA to incorporate products from the UNE tariff, the tariff rates, terms and conditions for those products will no longer be available to you after the tariffs are withdrawn.

Other than for Indiana, the exact date of the withdrawal of SBC's UNE tariffs is not known for each state.³ As stated above SBC plans to withdraw all such UNE tariffs in the near future, beginning as early as March 10, 2005. Therefore, this letter requests that you contact your Account Manager at your earliest convenience to begin the process of amending your ICA.

¹ See *Verizon North, Inc. vs. Strand, et al.*, 367 F.3d 577 (6th Cir. 2004); *Wisconsin Bell, Inc. vs. Bie, et al.*, 340 F.3d 441 (7th Cir. 2003), and *Verizon North, Inc. vs. Strand, et al.*, 309 F.3d 935 (6th Cir. 2002).

² In addition, the Illinois Commerce Commission has ruled that, consistent with the negotiation process required by the 1996 Act, such tariffs, while they are in effect, are available only to carriers that have, or enter into, an Interconnection Agreement with SBC. [Order, Docket 02-0864, p. 293-94 (June 9, 2004)]

³ Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana filed its Notice of Tariff Withdrawal with the Indiana Utility Regulatory Commission on January 27, 2005, with an effective tariff withdrawal date of March 13, 2005.

STATE OF MICHIGAN
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Case No. U-12320

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
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ATTACHMENT B

SBC Accessible Letter CLECALL05-017



Date: **February 11, 2005**

Number: **CLECALL05-017**

Effective Date: **N/A**

Category: **Mass Market ULS/UNE-P**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order -- Mass Market ULS/UNE-P/Order Rejection**

Related Letters: **[CLECALL05-019 and CLECALL05-020 ALs for Loop Transport; and CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering; and CLECALL05-018 Letter Re: ULS/UNE-P Price Increase/Transition Period]**

Attachment: **No**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Illinois, SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC Local Wholesale Customers**

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(d)(2), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops. Therefore, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for Mass Market Unbundled Local Switching and the UNE-P.²

Accordingly, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, CLECs are no longer authorized to place, nor will SBC accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after March 11, 2005 will be rejected. The effect of the TRO Remand Order on New, Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative notwithstanding interconnection agreements or applicable tariffs.

SBC stands ready to negotiate a commercial substitute for unbundled switching in combination with DS0 loops (either a short term arrangement as outlined in **CLECALL05-016**, or a longer

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

² "Mass Market" means less than a DS1 level or 1-23 lines (*see* TRO Remand Order, fn. 625).

term contract). Of course, other options offered by SBC remain available, such as Resale and UNE-L.

Should you have any questions regarding this implementation notice or a commercial arrangement, please contact your Account Manager.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's Own)
Motion, to consider Ameritech Michigan's)
compliance with the competitive checklist in)
Section 271 of the Federal Telecommunications)
Act of 1996.)

Case No. U-12320

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
LETTERS NOTIFYING THAT SBC MICHIGAN WILL UNILATERALLY
DISCONTINUE TARIFFS AND CERTAIN UNE OFFERINGS UNDER EXISTING
INTERCONNECTION AGREEMENTS**

ATTACHMENT C

SBC Accessible Letter CLECALL05-018



Date: **February 11, 2005**

Number: **CLECALL05-018**

Effective Date: **N/A**

Category: **Mass Market Unbundled Local
Switching/UNE-P/Transition Period
And Transition Pricing**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order for Mass
Market Unbundled Local Switching/UNE-P – Transition Plan**

Related Letters: **[CLECALL05-019 and
CLECALL05-020 ALs for Loop
Transport; and CLECALL05-016
SBC Interim "UNE-P
Replacement" Commercial
Offering and CLECALL05-017 on
Order Rejection ULS-UNE-P]**

Attachment: **Yes**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Illinois, SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC
California, SBC Nevada, SBC Arkansas, SBC Kansas, SBC Missouri, SBC
Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC Local Wholesale Customers**

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Mass Market Unbundled Local Switching/UNE-P.² These plans are in accordance with the TRO Remand Order and are described below with respect to the following two areas as outlined in the Order: 1) the 12-Month Transition Period for the Embedded Base and 2) Transition Pricing for the Embedded Base during the 12-month transition period.

As explained in **CLECALL05-017**, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after the effective date of the TRO Remand Order will be rejected.

Your embedded base of Mass Market Unbundled Local Switching and UNE-P arrangements will be treated in the following manner, as per the requirements of the TRO Remand Order. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order. To facilitate both parties meeting this obligation, attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment, along with instructions, will be available on CLEC-Online (<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print,

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

² "Mass Market" means less than a DS1 level or 1-23 lines (*see* TRO Remand Order, fn. 625).

complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005, to ensure prompt implementation of the TRO Remand Order requirements.

Transition Period for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

As established by the TRO Remand Order, the transition period for the Mass Market Unbundled Local Switching/UNE-P embedded base is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Mass Market Unbundled Local Switching/UNE-P lines to an alternative serving arrangement, e.g., Resale, Standalone Loops. SBC is prepared to accept and process transitional orders now.

SBC stands ready to negotiate Commercial Agreement alternatives with you during this Transition Period. Such alternatives are available on a short-term basis as announced in **CLECALL05-016**, as well as on a long-term basis. To the extent that you have not taken the necessary steps to transition your embedded base Mass Market Unbundled Local Switching/UNE-P lines within the mandated 12-month period, SBC will re-price such arrangements to a market-based rate.

Transition Pricing for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

During the Mass Market Unbundled Local Switching/UNE-P Transition Period, the Mass Market Unbundled Local Switching/UNE-P embedded base rates will be modified beginning on the effective date of the TRO Remand Order, i.e., March 11, 2005. While the FCC's Order discusses the need to amend ICAs prior to the end of the transition period, it clearly sets forth provisions for the rate modifications to be retroactive to March 11, 2005. Therefore, to ensure accurate billing based on current lines in service each month, the most effective mechanism to facilitate the rate modification is to apply it beginning March 11, 2005, and eliminate the need for manual true-ups at the end of the transition period. The rates will be modified to a rate equal to the higher of (1) the rate your company paid for such Mass Market Unbundled Local Switching/UNE-P as of June 15, 2004 *plus \$1.00* or (2) the rate the state commission has established or establishes,³ if any, between June 16, 2004 and March 11, 2005 for Mass Market Unbundled Local Switching/UNE-P, *plus \$1.00*.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final ULS-UNEP
Sample Amendmen..

³ Assuming such rate represents an increase, pursuant to the FCC's Interim Order (Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 16783 (2004)).

**POST-TRO REMAND (ULS Rate Increase and Embedded Base Transition) AMENDMENT TO
INTERCONNECTION AGREEMENT**

**BETWEEN
SBC ILEC(s)
AND**

_____ (“CLEC”)

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

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

NOW, THEREFORE, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to be consistent with at least the mass market unbundled local circuit switching findings by the FCC in its TRO Remand Order, and in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with “UNE-P”). Accordingly, pursuant to Rule 51.319(d)(2)(iii), although SBC shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of end-user customers, the price for Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market UNE-P, plus one dollar. For purposes of this Paragraph, “Mass Market” shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or “Enterprise” level.) CLEC shall be fully liable to SBC to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
2. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).
3. Paragraphs 1 and 2, above, apply and are operative regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.
4. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating

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

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

5. In all states other than Ohio, the Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this amendment under Section 252(e) of the Act or, absent such state commission approval, the date this amendment is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Amendment shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

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

CLEC _____

SBC Operations, Inc., authorized agent for the following SBC ILECs:

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

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

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

SAMPLE

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's Own)
Motion, to consider Ameritech Michigan's)
compliance with the competitive checklist in)
Section 271 of the Federal Telecommunications)
Act of 1996.)

Case No. U-12320

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
LETTERS NOTIFYING THAT SBC MICHIGAN WILL UNILATERALLY
DISCONTINUE TARIFFS AND CERTAIN UNE OFFERINGS UNDER EXISTING
INTERCONNECTION AGREEMENTS**

ATTACHMENT D

SBC Accessible Letter CLECALL05-019



Date: **February 11, 2005**

Number: **CLECALL05-019**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport – Order Rejection**

Related Letters: **[CLECALL05-020
Loop/Transport Price
Increase/Transition Period;
CLECALL05-016 SBC Interim
“UNE-P Replacement”
Commercial Offering;
CLECALL05-018 Letter Re:
ULS/UNE-P Price
Increase/Transition Period; and
CLECALL05-017 Order Rejection
ULS-UNE-P]**

Attachment: **Yes (4)**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada , SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

On February 4, 2005, the FCC issued its “TRO Remand Order”, concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs “may not obtain,” and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs “may not obtain,” and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements.

There are different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has included separate attachments for DS1 and DS3 Unbundled High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Unbundled Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport. Please refer to the appropriate attachment to determine how orders for each category of elements will be treated in light of the TRO Remand Order.

¹ References to “SBC” in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs.

Should you have any questions regarding this implementation notice, please contact your Account Manager.

CLECALL05-019

LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops – Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected DS1 and DS3 High-Capacity Loops"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 High-Capacity Loops on or after March 11, 2005 will be rejected.

CLECALL05-019

TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Dedicated Transport – Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 Dedicated Transport in excess of the caps established by Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) or on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) ("Affected DS1 or DS3 Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 Dedicated Transport on or after March 11, 2005 will be rejected.

CLECALL05-019

DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber Loops– Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(a)(6), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Loops. Any New, Migration or Move LSRs placed for Dark Fiber Loops on or after March 11, 2005 will be rejected.

CLECALL05-019

DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Dedicated Transport– Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(e)(iv), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Dedicated Transport in service areas between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order ("Affected Dark Fiber Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected Dark Fiber Dedicated Transport served by these Wire Centers on or after March 11, 2005 will be rejected.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's Own)
Motion, to consider Ameritech Michigan's)
compliance with the competitive checklist in)
Section 271 of the Federal Telecommunications)
Act of 1996.)

Case No. U-12320

**LDMI TELECOMMUNICATIONS, INC.'S OBJECTIONS TO SBC ACCESSIBLE
LETTERS NOTIFYING THAT SBC MICHIGAN WILL UNILATERALLY
DISCONTINUE TARIFFS AND CERTAIN UNE OFFERINGS UNDER EXISTING
INTERCONNECTION AGREEMENTS**

ATTACHMENT E

SBC Accessible Letter CLECALL05-020



Date: **February 11, 2005**

Number: **CLECALL05-020**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport - Transition Plan**

Related Letters: **[CLECALL05-019 Loop/Transport Order Rejection; CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering; CLECALL05-018 Letter Re: ULS/UNE-P Price Increase/Transition Period; and CLEC ALL05-017 Order Rejection ULS-UNE-P]**

Attachment: **Yes (5)**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Unbundled Dedicated Transport and Unbundled High-Capacity Loops. These plans have been developed in accordance with the TRO Remand Order and are described in element-specific attachments to this Accessible Letter with respect to the following two areas as outlined in the TRO Remand Order: 1) the applicable Transition Period for the Embedded Base and 2) the applicable Transition Pricing for the Embedded Base. There are different transition periods defined and different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has set forth the different implementation plans in separate attachments for DS1 and DS3 High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport.

As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

Your embedded base of the affected high-capacity loop and transport elements will be treated as is more specifically set forth in the attachments to this Letter, as per the requirements of the TRO Remand Order. Also attached is a sample amendment to your Interconnection Agreement. A

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

signature-ready Amendment and instructions will be available on CLEC-Online (<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final L and T
ample Amendment.

CLECALL05-020

LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for the Affected Unbundled DS1 and DS3 High-Capacity Loops is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 High-Capacity Loops to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 High-Capacity Loops in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for embedded base Affected Unbundled DS1 and DS3 High-Capacity Loops to equal the higher of (1) the rate your company paid for such high-capacity loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such high-capacity loops, *plus 15%*.

CLECALL05-020

TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Unbundled Dedicated Transport (UDT).

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 UDT in excess of the caps established by Rule 51.319(e)(2)(ii) and 51.319(e)(2)(iii) or on routes between pairs of Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(e)(2)(ii) and 51.319(e)(2)(iii) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for Affected DS1 and DS3 UDT is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 UDT facilities to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 UDT facilities in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for Affected DS1 and DS3 UDT to equal the higher of (1) the rate your company paid for such UDT facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such UDT facilities loops, *plus 15%*.

CLECALL05-020

DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber High-Capacity Loops. As defined in the TRO Remand Order, the transition period for unbundled Dark Fiber High-Capacity Loops is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for the removal of services you are providing over these unbundled Dark Fiber High-Capacity Loops and for returning the Loops to SBC. To the extent that there are CLEC embedded base unbundled Dark Fiber High-Capacity Loops in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for embedded base unbundled Dark Fiber High-Capacity Loops to be modified to a rate equal to the higher of (1) the rate your company paid for such Dark Fiber High-Capacity Loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such Loops, *plus 15%*.

CLECALL05-020

DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Transport.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber UDT on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(iv) ("Affected Dark Fiber UDT").

As established by the TRO Remand Order, the transition period for Affected Dark Fiber UDT is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for removing services you are providing over the Affected Dark Fiber UDT and for returning these facilities to SBC. To the extent that there are CLEC embedded base Affected Dark Fiber UDT facilities in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for Affected Dark Fiber UDT to be modified to a rate equal to the higher of (1) the rate your company paid for such facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such facilities, *plus 15%*.

**POST-TRO REMAND (Loop-Transport Rate Increase and Embedded Base Transition)
AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
SBC ILEC(s)
AND
 (“CLEC”)**

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

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 (“TRO Remand Order”), holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to be consistent with at least the high capacity loop and dedicated transport findings by the FCC in its TRO Remand Order, and in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

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

Dark Fiber Loops:

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

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

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

The above-listed element(s) are referred to herein as the “Affected Element(s).”

Accordingly, pursuant to Rules 51.319(a) and (e), although SBC shall continue to provide CLEC’s embedded base of the Affected Element(s) (i.e., only Affected Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), *plus 15%*. CLEC shall be fully liable to SBC to pay such pricing under the

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

Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

2. CLEC will complete the transition of embedded base Affected Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 or 18 months from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.
3. Paragraphs 1 and 2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.
4. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*") and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"); the FCC's 2003 Triennial Review Order and 2005 Triennial Review Remand Order; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).
5. In all states other than Ohio, the Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this amendment under Section 252(e) of the Act or, absent such state commission approval, the date this amendment is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Amendment shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

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

CLEC _____

SBC Operations, Inc., authorized agent for the following SBC ILECs

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

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

Date: _____

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

SAMPLE

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's Own)	
Motion, to consider Ameritech Michigan's)	Case No. U-12320
compliance with the competitive checklist in)	
Section 271 of the Federal Telecommunications)	
Act of 1996.)	

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Mary E. Turney, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on February 18, 2005, a copy of LDMI Telecommunications, Inc.'s Objections to SBC Accessible Letters Notifying that SBC Michigan will Unilaterally Discontinue Tariffs and Certain UNE Offerings Under Existing Interconnection Agreements in the above-captioned matter, was served via Electronic Mail and United States Postal Service First-Class Mail upon those parties listed on the attached service list.

Mary E. Turney

Subscribed and sworn to before me
this 18th day of February, 2005.

Haran C. Rashes, Notary Public
Washtenaw County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: September 18, 2007.

MPSC Case No. U-12320
Service List
Page 1 of 5

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Service List
Page 2 of 5

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