

INTERCONNECTION AGREEMENT

Between

LEVEL 3 COMMUNICATIONS, LLC

and

U S WEST COMMUNICATIONS, INC.

For the State of Nebraska

CDS-990914-0066

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INTERCONNECTION AGREEMENT

This Interconnection Agreement, is between Level 3 Communications, LLC ("Level 3"), on behalf of itself and its Affiliates, and U S WEST Communications, Inc. ("USWC"), a Colorado corporation, on behalf of itself and its Affiliates, (collectively, "the Parties"). Pursuant to this Agreement, Level 3 as a Competitive Local Exchange Carrier ("CLEC") or Reseller (as applicable) and USWC as an Incumbent Local Exchange Carrier ("ILEC") will extend certain arrangements to one another within each LATA in which they both operate within the state of Nebraska. This Agreement is a combination of agreed terms and terms imposed by arbitration under Section 252 of the Communications Act of 1934, as modified by the Telecommunications Act of 1996 ("the Act"), and as such does not necessarily represent the position of either Party on any given issue. The Parties enter into this Agreement without prejudice to any position they may have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

RECITALS & PRINCIPLES

WHEREAS, interconnection between competing Local Exchange Carriers ("LECs") is necessary for the termination of each company's originating traffic on the other carrier's network; and

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers; and

WHEREAS, USWC is an ILEC or has a majority ownership interest in LECs which are ILECs; and

WHEREAS, USWC for itself and its Affiliates is willing to sell unbundled Network Elements and Ancillary Functions and additional features, as well as services for resale, on the terms and subject to the conditions of this Agreement; and

WHEREAS, Level 3 is a Telecommunications Carrier and has requested to adopt the Commission-approved Interconnection Agreement between U S WEST Communications, Inc. and AT&T Communications of the Midwest, Inc. for the provision of interconnection, and unbundled Network Elements (including Ancillary Functions and additional features) pursuant to the Act and in conformance with USWC's duties under the Act.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Level 3 and USWC hereby covenant and agree as follows:

SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which USWC agrees to provide (i) services for resale (hereinafter referred to as "Local Services") and (ii) certain unbundled Network Elements, Ancillary Functions and additional features (hereinafter collectively referred to as "Network Elements") or combinations of such Network Elements ("Combinations") for Level 3's own use or for resale to others. This Agreement includes all accompanying Appendices and Attachments.

This Agreement also sets forth the terms, conditions, and prices for the interconnection of Level 3's network to USWC's network and for the reciprocal compensation of the transport and termination of local telecommunications traffic between the Parties. Each Party may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill those responsibilities. Unless otherwise provided in this Agreement, each Party will perform all of its obligations hereunder throughout its entire service area in the State of Nebraska.

The Network Elements, Combinations or Local Services provided pursuant to this Agreement may be connected to other Network Elements, Combinations or Local Services provided by USWC or to any Network Elements, Combinations or Local Services provided by Level 3 itself or by any other vendor.

Subject to the requirements of this Agreement, Level 3 may at any time add to, delete from, or otherwise revise its purchases of the Local Services, Network Elements or Combinations provided hereunder. USWC will not discontinue any Network Element, Combination or Local Service provided hereunder without the prior written agreement of Level 3.

- B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement), such action shall not be unreasonably delayed, withheld or conditioned.

- C. Neither Party shall reconfigure, reengineer or otherwise redeploy its network in a manner which would impair the other Party's ability to offer Telecommunications Services in the manner contemplated by this Agreement, the Act or the FCC's Rules and Regulations. Neither shall a Party use any service related to or use any of the services provided in this Agreement in any manner that interferes with the other Party's use of their service or otherwise impairs the quality of service to the other Party's customers. Both Parties agree that all obligations undertaken pursuant to this Agreement, including, without limitation, performance standards, intervals, and technical requirements are material obligations hereof and that time is of the essence.

PART I: GENERAL TERMS AND CONDITIONS

1. Term

- 1.1 When executed by authorized representatives of USWC and Level 3, this Agreement shall become effective as of the Effective Date stated above, and shall expire three (3) years from the Effective Date, unless renewed by Level 3 or terminated earlier in accordance with the provisions of this Agreement.
- 1.2 USWC shall give Level 3 notice of the impending expiration of this Agreement (or any renewable term thereof) ninety (90) days before such expiration. Level 3 shall have the right to extend the term of this Agreement, in its sole discretion, for successive one-year periods ("Renewal Year") upon expiration of the initial term or any subsequent Renewal Year. Each renewal shall be effective upon notice to USWC by Level 3. At the expiration of the term of this Agreement, or any renewal thereof, this Agreement shall continue in effect, on a month-to-month basis, at the same terms, conditions and prices as those in effect at the end of the latest term, or renewal, until terminated by Level 3.
- 1.3 Level 3 may elect at any time to terminate this entire Agreement at Level 3's sole discretion, upon sixty (60) days written notice to USWC. Unless otherwise provided in any applicable tariff or Section of this Agreement, in the case of termination of this Agreement, Level 3's liability shall be limited to payment of the amounts due for Network Elements, Combinations and Local Services provided up to and including the date of termination. USWC recognizes that the Network Elements, Combinations and Local Services provided hereunder are vital to Level 3 and must be continued without interruption, and that upon the termination or expiration of this Agreement, Level 3 may itself provide or retain another vendor to provide such comparable Network Elements,

Combinations or Local Services. USWC agrees to cooperate in an orderly and efficient transition to Level 3 or another vendor. USWC further agrees to co-ordinate the orderly transition to Level 3 or another vendor such that the level and quality of the Network Elements, Combinations and Local Services are not degraded and to exercise its best efforts to effect an orderly and efficient transition. Level 3 may terminate any Local Service(s), Network Element(s) or Combination(s) provided under this Agreement upon thirty (30) days written notice to USWC, unless a different notice period or different conditions are specified for termination of such Local Service(s), Network Element(s) or Combination(s) in this Agreement, in which event such specific period and conditions shall apply.

- 1.4 In the event of a breach of any material provision of this Agreement by either Party, the non-breaching Party shall give the breaching Party written notice thereof, and:
 - 1.4.1 If such material breach is for non-payment of amounts due hereunder pursuant to Attachment 7 Section 13, the breaching Party shall cure such breach within thirty (30) days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed “amounts due hereunder” for the purpose of this provision.
 - 1.4.2 If such material breach is for any failure to perform in accordance with this Agreement, which, in the sole judgment of the non-breaching Party, adversely affects the non-breaching Party’s subscribers, the non-breaching Party shall give notice of the breach and the breaching Party shall cure such breach to the non-breaching Party’s reasonable satisfaction within ten (10) days or within a period of time equivalent to the applicable interval required by this Agreement, whichever is shorter, and if the breaching Party does not, the non-breaching Party may, at its sole option, terminate this Agreement, or any parts hereof. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. For the purpose of this Subsection 1.4.2 notice may be given electronically or by facsimile and in such case shall be deemed received when sent.
 - 1.4.3 If such material breach is for any other failure to perform in accordance with this Agreement, the breaching Party shall cure such breach to the non-breaching Party’s reasonable satisfaction within forty-five (45) days, and if the breaching Party does not, the non-breaching Party may, at its sole option, terminate this

Agreement, or any parts hereof. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

- 1.5 In the event of a termination as described in this Section 1, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements shall continue without interruption.

2. Payment and Deposit

- 2.1 Amounts payable under this Agreement are due and payable as described in Attachment 7 to this Agreement unless properly disputed under this Agreement or applicable tariff. The billing Party may discontinue processing additional orders, disconnect associated services, or otherwise seek appropriate remedies for failure by the other Party to make full payment of non-disputed amounts within sixty (60) days after receipt of the billing Party's invoice.
- 2.2 USWC may require a suitable deposit to be held by USWC as a guarantee for payment of USWC's charges for companies which cannot demonstrate sufficient financial integrity based on commercially reasonable standards, which may include a satisfactory credit rating as determined by a recognized credit rating agency reasonably acceptable to USWC. Financial integrity or satisfactory credit for the purposes of this Agreement may also be defined as (a) twelve (12) months positive payment history for billing amounts of comparable magnitude by Level 3 in another capacity with USWC, as, for example, in the interexchange area; (b) financial standing as outlined in the preceding sentence; (c) posting a bond; or (d) twelve (12) consecutive months' service under this agreement without a termination for nonpayment of billing amounts of comparable magnitude and with no more than one (1) notification of intent to terminate service for nonpayment during that twelve month period. If Level 3 is unable to establish satisfactory credit, USWC may require Level 3 to make a deposit to be held by USWC as a guarantee of the payment of USWC's charges. Any deposit required of Level 3 is due and payable within ten (10) days after the requirement is imposed. The amount of the deposit shall be the estimated charges which will be due to USWC for a two-month period.
- 2.3 When the service is terminated or when Level 3 has established satisfactory credit, if required under the terms of the preceding paragraph, the amount of the initial or additional deposit, with any

interest due, will, at Level 3's option, be either credited to Level 3's account or refunded. Interest on the deposit shall be accumulated by USWC at a rate equal to the prime rate, as published in the Wall Street Journal from time to time.

- 2.4 Unless otherwise specified, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either (i) 0.04 percent per day compounded daily for the number of calendar days from the payment due date to, and including, the date of payment, or (ii) the highest lawful rate, whichever is less. If late payment charges for services are not permitted by local jurisdiction, this provision shall not apply.
- 2.5 When applicable and unless otherwise specified in Attachment 8 to this Agreement, each Party shall provide Bellcore AMA formatted records to generate bills to the other party.
- 2.6 Usage measurement billed in minutes of use (MOU) under this Agreement shall be recorded in actual conversation seconds as described in the Definitions of Attachment 12. Total conversation seconds for each category will be summed for the entire monthly billing cycle and then rounded to the next whole minute for determination of the billed amount.

3. Taxes and Insurance

- 3.1 Any federal, state or local excise, sales, gross receipts, transaction, use or similar taxes (excluding any taxes on either Party's corporate existence, status, or income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party so obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit the taxes shall cooperate in any such contest by the other Party.

To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption.

Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

- 3.2 The Parties will maintain insurance on their operations as may be required by federal, state, or local government regulations. A Party may self-insure in order to satisfy the insurance requirement under this paragraph by giving written notice to the other Party of its intention to self-insure.

A Party that collocates equipment on the other Party's premises (including but not limited to Central Offices, poles, ducts, and conduits) agrees to maintain, at the collocating Party's expense during the entire time that its equipment occupies premises, (i) General Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury or property damage, (ii) Employer's Liability in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence, (iii) Worker's Compensation in an amount not less than that prescribed by statutory limits, and (iv) Umbrella/Excess Liability coverage in an amount of five million dollars (\$5,000,000.00) excess of coverage specified above. Each policy shall be underwritten by an insurance company having a BEST insurance rating of B+VII or better, and which is authorized to do business in the jurisdiction in which the Premises is located. The collocating Party shall furnish the other Party with certificates of insurance (or their equivalent) which evidence the minimum levels of insurance set forth herein and which name the other Party as an additional insured.

4. Audits and Inspections

- 4.1 As used herein "Audit" shall mean a comprehensive review of services performed within the past 24 months under this Agreement; "Inspection" shall mean an inquiry into a specific element of or process related to services performed under this Agreement. Either Party may request to perform up to four Audits of the other Party per 12-month period commencing with the Effective Date. Either Party may perform Inspections as it deems necessary. Subject to reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records and other documents, among other things, verifying the accuracy of the audited Party's billing and invoicing and evaluating compliance with the terms and conditions of this Agreement and performance related thereto. The Party requesting the audit may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof by the requesting Party.

- 4.2 The audited Party shall promptly correct any billing error that is revealed in an audit, including refunding any overpayment by the auditing Party in the form of an immediate cash payment, or where appropriate, through a credit on the invoice from the audited Party for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternative Dispute Resolution procedures described in Attachment 1.
- 4.3 Each Party shall cooperate in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the bills.
- 4.4 Either Party may audit the other Party's books, records and documents more frequently than provided in this Section 4.1 preceding during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in the audited Party's favor with an aggregate value of at least one percent (1%) of the amounts payable by the auditing Party for Local Services, Network Elements or Combinations or compensation for transport and termination of local telecommunications traffic provided during the period covered by the audit.
- 4.5 Audits shall be at the auditing Party's expense, subject to reimbursement by the audited Party in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by the auditing party hereunder by an amount that is, on an annualized basis, greater than one percent (1%) of the aggregate charges for the Local Services, Network Elements and Combinations or compensation for transport and termination of local telecommunications traffic during the period covered by the audit.
- 4.6 Upon (a) the discovery by a Party of overcharges not previously reimbursed by the other Party or (b) the resolution of disputed audits, the amounts shall be promptly reimbursed including interest charges at the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.
- 4.7 All information received or reviewed by the requesting Party or any persons or firms acting on its behalf in connection with the Audit is

to be considered Proprietary Information as defined by this Agreement. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, the audited Party will aggregate such competitors' data before release to the auditing Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the audit.

5. Indemnification

5.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgement or settlement of any nature or kind arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third party known or unknown, liquidated or unliquidated, including, but not limited to, costs and attorneys' fees, accounting or otherwise, whether suffered, made, instituted, or asserted by any other party or person alleging any breach of any representation, warranty or covenant made by such indemnifying party (the "Indemnifying Party") in this Agreement, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the Indemnifying Party's performance, breach of Applicable Law, or status or the actions of its employees, agents and subcontractors; for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right, now known or later developed (referred to as "Intellectual Property Rights"); or for failure to perform under this Agreement, regardless of the form of action.

5.2 The indemnification provided herein shall be conditioned upon:

Whenever a Claim shall arise for indemnification under this Section 5 the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request 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 Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party shall consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the 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 relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall 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 Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense 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.

6. Responsibility for Environmental Contamination

- 6.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or Release of any Environmental Hazard the other Party introduced to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result

from (a) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to its Work Locations or (b) the presence or Release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

7. Limitation of Liability

- 7.1 Except as otherwise provided in the indemnity section, no Party shall be liable to the other Party for any Loss, defect or equipment failure caused by the conduct of the other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.
- 7.2 Except for Losses alleged or made by a Customer of either Party, in the case of any Loss arising from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligations under this Section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its (including that of its agents, servants, contractors or others acting in aid or concert with it) negligence or willful misconduct.
- 7.3 Except for indemnity obligations, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.
- 7.4 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (i) willful or intentional misconduct (including gross negligence or its repeated breach of any one or more of its material obligations under this agreement); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by

such party's negligent act or omission or that of their respective agents, subcontractors or employees nor shall anything contained in this section limit the Parties' indemnification obligations, as specified below.

8. Remedies for Failure to Meet Performance and Technical Standards

8.1 USWC will provide all Local Services, Network Elements or Combinations, and transport and termination of local telecommunications traffic **at the same level of performance that USWC provides such Local Services, Network Elements or Combinations, and transport and termination of local telecommunications traffic to itself, notwithstanding any higher level of service that may be specified by the** service standards, measurements, performance requirements, and Direct Measures of Quality (collectively referred to herein as "DMOQs") that are expressly specified in this Agreement and Attachment 11 hereto or as otherwise ordered by the Commission. In cases where DMOQs are not expressly specified, USWC will provide all Local Services, Network Elements or Combinations, and transport and termination of local telecommunications traffic in accordance with quality standards which are **at least equal to the level of quality that USWC provides itself or is required to meet by the Commission or by law**, in providing Local Service, Network Elements or Combinations, or transport and termination of local tele-communications traffic to itself, to its end-users or to its affiliates.³

8.1.1 If Level 3 desires a higher level of service than that provided by USWC to itself or as otherwise required by the Commission or by law, Level 3 shall pay the additional costs, if any, to build or modify USWC's facilities to accommodate Level 3's request if those additional costs are not included in the existing TELRIC collocation rates. USWC shall have the burden of proving that any claimed additional costs are not already covered. If USWC demonstrates it is entitled to recover additional costs, USWC shall be entitled to recover those costs through non-recurring charges. USWC shall allocate the non-recurring charges, if any, among all requesting carriers, [Level 3 proposes adding the following: including USWC], in a Competitively Neutral manner.⁴

³ Per July 1, 1997 Order at 6, Issue G.

⁴ Per July 1, 1997 Order at 6, Issue G.

- 8.2 Level 3 shall also have the right, in its sole discretion, to order an alternative Network Element, Combination or Service from USWC to replace any Network Element(s), Combination(s) or Service(s) for which the quality of service delivered by USWC falls below quality standards that USWC offers itself or is required to meet by the Commission or by law. In such instance(s), USWC agrees to waive non-recurring charges for the replacement Network Element(s), Combination(s) or Service(s), and will charge no more on a recurring basis for the replacement Network Element(s), Combination(s) or Service(s), than the recurring rate(s) for the substandard Network Element(s), Combination(s) or Service(s). In ordering alternative Network Elements, Combinations or Local Services pursuant to this Section, Level 3 shall choose the least costly Network Element, Combination or Service that reasonably meets its replacement needs. Once USWC corrects the deficiencies in the original Network Element(s), Combination(s) or Service(s) and the corresponding quality measures are demonstrated to satisfy the required standards, USWC may offer to return Level 3's service to those original Network Element(s), Combination(s) or Service(s). If Level 3 chooses to return to the original Network Element(s), Combination(s) or Service(s), USWC will expedite the transition and will waive non-recurring charges for that change. If Level 3 chooses to retain the replacement services, USWC may re-establish the recurring rate for the replacement Network Element(s), Combination(s) or Service(s) at their normal levels and will no longer be constrained by the rates for the original Network Element(s), Combination(s) or Service(s).
- 8.3 USWC acknowledges that remedies at law alone are inadequate to compensate Level 3 for USWC's failures to meet the quality requirements specified by this Agreement, failures to install or provision Network Elements, Combinations or Services in accordance with the Due Dates specified in this Agreement, or for failures to provide Customer Usage Data in accordance with this Agreement. Level 3 shall have the right to seek injunctive relief and other equitable remedies (in addition to remedies provided in this Agreement, at law and through administrative process) to require USWC (a) to cause the Network Elements, Combinations or Services ordered by Level 3 to meet the quality requirements specified by this Agreement, (b) to install or provision the Network Elements, Combinations or Services ordered by Level 3 within the Due Dates specified in this Agreement and (c) to provide Customer Usage Data in accordance with this Agreement.

8.4 USWC shall meet, on an interim basis, the technical standards set forth in this Agreement until permanent technical standards that are fair and in the public interest are established in the appropriate docket before the Commission. Until that docket is finalized, USWC may file with the Commission a formal complaint objecting to a specific technical standard set forth in this Agreement that USWC believes is unduly burdensome or that will cause USWC irreparable financial harm during the interim time period.⁵

9. Warranties

- 9.1 Notwithstanding any other provision of this Agreement, the Parties agree that neither Party has made, and that there does not exist, any warranty, express or implied, of fitness for a particular purpose.
- 9.2 Except as otherwise provided herein, each Party shall perform its obligations hereunder at a performance level no less than the highest level which it uses for its own operations, or those of its Affiliates, but in no event shall a Party use less than reasonable care in the performance of its duties hereunder.
- 9.3 USWC warrants that Local Interconnection will be provided in a competitively neutral fashion, at any technically feasible point within its network at Level 3's request, and that such interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the highest level provided by USWC to itself or its Affiliates. USWC shall have the full burden of proving that a requested Interconnection Point ("IP") is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 an alternative IP which will not impair Level 3's ability to provide its Telecommunications Services. Such alternative IP shall be technically equivalent to the requested IP and shall be subject to the same terms, conditions and price as the requested IP.
- 9.4 USWC warrants that it will provide to Level 3 on a nondiscriminatory basis unbundled Network Elements and ancillary services, including but not limited to local loop, local switching, tandem/transit switching, transport, data switching, intelligent network and advanced intelligent network, operator service, directory assistance, 911, white and yellow page listings, and repair and maintenance, at any technically feasible points requested by Level 3, and all operations support systems used and useful in the

⁵ Per July 1, 1997 Order at 6, Issue F.

preordering, ordering, provisioning, design, engineering, maintenance, repair, tracking, management, billing and any other function or functionality associated directly or indirectly with unbundled Network Elements and ancillary services. USWC further warrants that these services, or their functional components, will contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the highest level which it provides to itself or its Affiliates. USWC shall have the full burden of proving that the provision of the services requested by Level 3 is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 an alternative service, which will not impair Level 3's ability to provide its Telecommunications Services. Such alternative service shall be technically equivalent to the requested service and shall be subject to the same terms, conditions and price as the requested service.

- 9.5 USWC warrants that it will provide to Level 3 nondiscriminatory access to poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights of way, and other pathways owned or controlled by USWC, using capacity currently available or that can be made available. USWC shall have the full burden of proving that such access is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 alternative suitable access which will not impair Level 3's ability to provide its Telecommunications Services. Such alternative access shall be technically equivalent to the requested access and shall be subject to the same terms, conditions and price as the requested access.
- 9.6 USWC warrants that it will provide to Level 3, in a competitively neutral fashion, unbundled local Loops, network interface devices or units, loop distribution, digital loop carrier/analog cross connect, and loop feeders, that contain all the same features, functions and capabilities that USWC makes available to itself or to its Affiliates in the provision of its Telecommunications Services with at least the same quality of service, order processing, provisioning and installation, trouble resolution, maintenance, customer care, and billing, as the highest quality USWC provides of equivalent features, functions and capabilities to itself, its Affiliates, or its own subscribers. USWC shall have the full burden of proving that access to the unbundled local Loop or any of its unbundled components is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 alternative suitable facilities which will not impair Level 3's ability to

provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested access and subject to the same terms, conditions and price as the requested access.

- 9.7 USWC warrants that it will provide to Level 3 unbundled transport and its components, including common transport, dedicated transport, with and without electronics, and multiplexing/digital cross connect, with all the same features, functions and capabilities, and with at least the same quality level which USWC provides to itself or its Affiliates in provision of its, or such Affiliate's, Telecommunications Services, and that such services will be provided in a competitively neutral fashion. USWC shall have the full burden of proving that access to unbundled transport or any unbundled transport components is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 alternative suitable facilities which will not impair Level 3's ability to provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested access and subject to the same terms, conditions and price as the requested access.
- 9.8 USWC warrants that it will provide unbundled local switching and its functional components, including line port, trunk port, and switching capacity, including all features, functions and capabilities, and nondiscriminatory access via electronic interface to databases and associated signaling needed for call routing, call completion, and service creation, and to create and bill the communications path, all at the same or better grade of service that USWC provides to itself or its Affiliates, unless service degradation is due to Level 3 purchasing insufficient capacity to meet its own demand. USWC further warrants that unbundled local switching and its functional components will be provided in a competitively neutral fashion. USWC shall have the full burden of proving that the provision of unbundled local switching or its functional components is not technically feasible. To the extent USWC proves infeasibility, USWC shall be required to provide to Level 3 alternative suitable facilities which will not impair Level 3's ability to provide its Telecommunications Services. Such alternative facilities shall be technically equivalent to the requested access and subject to the same terms, conditions and price as the requested access.
- 9.9 USWC warrants that it will provide non-discriminatory access to telephone numbers.

- 9.10 USWC warrants that it will provide to Level 3, in a competitively neutral fashion, interim number portability with the same features, functions and capabilities that USWC provides to itself or its Affiliates, and with as little impairment of functioning, quality, reliability, and convenience as possible, and that it will provide such service as required by the FCC in Telephone Number Portability, CC Docket No. 95-116, First Report and Order, released July 2, 1996.
- 9.11 Each Party warrants that it will provide to the other Party, in a competitively neutral fashion, dialing parity for local exchange service with the same features, functions and capabilities that the Party provides to itself or its Affiliates. Such service will be provided as required by the FCC in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, released August 8, 1996, so that either Party's subscribers experience no greater post-dial delay than similarly situated subscribers of the other Party and are not required to dial any greater number of digits than similarly situated subscribers.
- 9.12 USWC warrants that with respect to Local Resale, order entry, provisioning, installation, trouble resolution, maintenance, customer care, billing, and service quality will be provided at least as expeditiously as USWC provides for itself or for its own retail local service customers or to others, or to its Affiliates. USWC will provide such services to Level 3 in a competitively neutral fashion and at a level of quality equal to the highest level of quality USWC provides for itself for its own retail local service customers or to others, or to its Affiliates. USW warrants further that it will impose no restrictions on Level 3's resale of these services unless specifically sanctioned by the FCC.
- 9.13 USWC warrants that it will provide on a nondiscriminatory basis space on its premises for physical or virtual collocation, as Level 3 may specify, for equipment necessary for Level 3's interconnection and access to unbundled network elements.

10. Nonexclusive Remedies

- 10.1 Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.
- 10.2 The obligations of USWC and the services offered under this Agreement are unique. Accordingly, in addition to any other

available rights or remedies, Level 3 may sue in equity for specific performance and USWC expressly waives the defense that a remedy in damages would be adequate.

- 10.3 An illegal change in a subscriber's carrier selection results from the event in which USWC switches a subscriber from Level 3 service to USWC service without a valid customer request. In such event, USWC shall reimburse Level 3 in an amount equal to all charges paid by such subscriber to USWC from the time of such switch to the time at which the subscriber is returned to Level 3. This remedy shall be in addition to all other remedies available to Level 3 under this Agreement or otherwise available.

In the event USWC fails to switch a subscriber to Level 3 service, as requested through a valid Level 3 service request, within the intervals set forth in this Agreement, the continued provision of Telecommunications Services by USWC to such subscriber shall be deemed an illegal change in subscriber's carrier selection commencing with the time at which USWC failed to switch such subscriber. In such event, USWC shall reimburse Level 3 in an amount equal to all charges paid by such subscriber to USWC from the time of such failure to switch to the time at which the subscriber switch is accomplished. This remedy shall be in addition to all other remedies available to Level 3 under this Agreement or otherwise available.

- 10.4 All rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or in equity in the event of any breach or threatened breach by the other Party of any provision of this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions of this Agreement.

11. Dispute Resolution

- 11.1 All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved according to the procedures set forth in Attachment 1, except that those Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 7 shall be addressed in accordance with the Billing Disputes section of Attachment 7 prior to resolution according to the procedures set forth in Attachment 1. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any Customer of either

Party contemplated by this Agreement. The foregoing notwithstanding, neither this Section 11 nor Attachment 1 shall be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1.

- 11.2 In an effort to settle disputed issues without resorting to the formal procedures of Attachment 1, the Parties agree to exchange escalation lists which reflect contact personnel including Vice President-level officers. These lists shall include name, department, title, phone number, and fax number for each person. The Parties agree to exchange an up-to-date list on a quarterly basis.

12. Nondisclosure/Confidentiality and Proprietary Information

- 12.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, market data, orders for Local Services, Network Elements, or Combinations, Recorded Usage Data as described in Attachment 8, and information that would constitute Customer Proprietary Network Information (“CPNI”) pursuant to the Act and the rules and regulations of the FCC (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as “Confidential” or “Proprietary”, or (iii) communicated orally and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be “Confidential” or “Proprietary” (collectively referred to as “Proprietary Information”), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.
- 12.2 The Recipient may make copies of Proprietary Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original. Upon request by the Discloser, the Recipient shall return, within thirty (30) days of such request, all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the Recipient may retain one (1) copy for archival purposes. If either Party loses or makes an unauthorized disclosure of the other Party's Proprietary Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 12.3 For a period of five (5) years from the receipt of Proprietary Information, each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only for performing the covenants contained in this Agreement. Neither Party shall use the other

Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

12.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that :

- a) was at the time of receipt, already known to the Recipient free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the Discloser; or
- b) is or becomes publicly known through no wrongful act of the Recipient; or
- c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the Discloser with respect to such information; or
- d) is independently developed by an employee, agent, or contractor of the Recipient which individual is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e) is disclosed to a third person by the Discloser without similar restrictions on such third person's rights; or
- f) is approved for release by written authorization of the Discloser; or
- g) is required to be made public by the Recipient pursuant to applicable law or regulation provided that the Recipient shall give sufficient notice of the requirement to the the Discloser to enable the Discloser to seek protective orders.

12.5 Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date of this Agreement.

12.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.

- 12.7 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.
- 12.8 CPNI related to a Party's subscribers obtained by virtue of Local Interconnection or any other service provided under this Agreement shall be that Party's proprietary information and may not be used by the other Party for any purpose except performance of its obligations under this Agreement, and, in connection with such performance, shall be disclosed only to employees with a need to know, unless the Party's subscriber expressly directs the Party to disclose such information to the other Party pursuant to the requirements of Section 222(c)(2) of the Act. If the other Party seeks and obtains written approval to use or disclose such CPNI from the Party's subscribers, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the other Party may use or disclose only such information as the Party provides pursuant to such authorization and may not use information that has been otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

13. This Section intentionally deleted.⁶

14. Customer Credit History

- 14.1 The Parties agree to make available to a designated third-party credit bureau, on a timely basis, the following customer payment history information available for each person or entity that applies for local or IntraLATA toll Telecommunications Service(s) from either carrier. Such information shall be provided on the condition that the credit bureau will only make such information available to the carrier to which the person or entity in question has applied for Telecommunication Service:

Applicant's name;

Applicant's address;

Applicant's previous phone number (if any);

⁶ Per July 1, 1997 Order at 8, Issue N.

Amount (if any) of unpaid balance in applicant's name;

Whether applicant is delinquent on payments;

Length of service with prior local or IntraLATA toll provider;

Whether applicant had local or IntraLATA toll service terminated or suspended within the last six months with an explanation of the reason therefor; and

Whether applicant was required by prior local or IntraLATA toll provider to pay a deposit or make an advance payment, including the amount of each.

15. Branding

- 15.1 Services offered by USWC to Level 3 that incorporate Network Elements or Combinations made available to Level 3 pursuant to this Agreement and Local Services obtained from USWC that Level 3 offers for resale shall be provided with the standard USWC branding unless Level 3 notifies USWC in writing of its election to obtain such services on an "unbranded" or "rebranded" basis. Such unbranding of the services shall be at no additional cost to Level 3. At the request of Level 3 and where technically feasible, USWC will rebrand the services in Level 3's name, provided that the costs associated with such rebranding are paid by Level 3.

Services offered by Level 3 incorporating Network Elements or Combinations made available to Level 3 pursuant to this Agreement, and Local Services that Level 3 offers for resale shall, at Level 3's sole discretion, be branded exclusively as Level 3 services, or otherwise, as Level 3 shall determine. Level 3 shall provide the exclusive interface to Level 3 Customers in connection with the marketing, offering or provision of Level 3 services, except as Level 3 shall otherwise specify. In those instances where Level 3 requires USWC personnel to interface directly with Level 3 Local Service Customers, either orally in person or by telephone, or in writing, such personnel shall identify themselves as representing Level 3, shall not identify themselves as representing USWC, and shall not provide information to Level 3 local service customers about USWC's products or services. All forms, business cards or other business materials furnished by USWC to Level 3 Local Service Customers when USWC is acting on behalf of Level 3 shall be subject to Level 3's prior review and approval, and shall bear no corporate name, logo, trademark or tradename other than Level 3's or such other brand as Level 3 shall determine. USWC shall

provide, for Level 3's review and approval, the methods and procedures, training and approaches to be used by USWC to ensure that USWC meets Level 3's branding requirements.

16. Intellectual Property

This Section intentionally deleted.⁷

17. Publicity and Advertising

17.1 Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

18. Force Majeure

18.1 Except as otherwise specifically provided in this Agreement, neither Party shall be responsible for any delay or failure in performance of any part of this Agreement resulting from acts or occurrences beyond the reasonable control of such Party and without its fault or negligence, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the Effective Date of this Agreement, including, without limitation: fire, explosion, earthquakes, floods, volcanic action, other major environmental disturbances, unusually severe weather conditions, power failure, nuclear accidents, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so interfered with. The affected Party shall use its best efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes cease or are removed. In the event of such performance delay or failure, each Party agrees to resume performance in a non-discriminatory manner and not favor its own provision of Telecommunications

⁷ Per July 1, 1997 Order at 4, Issue G.

Services above that of the other Party. For purposes of this Agreement, Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work Locations.

19. Waiver

19.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. No course of dealing or failure of either Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. By entering into this Agreement, neither Party waives any right(s) granted to it pursuant to the Act.

20. Governing Law and Compliance With Laws

20.1 This Agreement shall be deemed to be a contract made under and shall be construed, interpreted and enforced in accordance with the laws of the State of Nebraska. Insofar as matters of federal law or regulation are exclusively concerned, the Parties agree to the exclusive jurisdiction of the federal court for the State of Nebraska. Issues or matters exclusively arising under state law or regulation may be heard by the state court which would otherwise have jurisdiction over such issue or matter. Each Party shall comply, at its own expense, with all Applicable Law that relates to (a) its obligations under or activities in connection with this Agreement; or (b) its activities undertaken at, in connection with, or relating to Work Locations. USWC, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, necessary permits, space, and power), which are necessary for USWC to provide the Network Elements and Local Services pursuant to this Agreement.

20.2 USWC shall be responsible for obtaining and keeping in effect all FCC, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. Level 3 shall be responsible for obtaining and keeping in effect all FCC, state regulatory Commission, franchise authority and other regulatory

approvals that may be required in connection with its offering of services to Level 3 Customers contemplated by this Agreement. Level 3 shall reasonably cooperate with USWC in obtaining and maintaining any required approvals for which USWC is responsible, and USWC shall reasonably cooperate with Level 3 in obtaining and maintaining any required approvals for which Level 3 is responsible.

- 20.3 In the event either Party is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, that Party shall (a) consult with the other Party reasonably in advance of such filing about the form and substance of such filing, (b) provide to the other Party its proposed tariff prior to such filing, and (c) take all steps reasonably necessary to ensure that such tariff or other filing imposes obligations that are identical to those provided in this Agreement and preserves for the Parties the full benefit of the rights otherwise provided in this Agreement. In no event shall either Party file any tariff that purports to govern Local Service, Network Elements or Combinations, or transport and termination of local telecommunications traffic that is inconsistent with the rates and other terms and conditions set forth in this Agreement. If, subsequent to the effective date of any such tariff, the filing Party is ordered not to file tariffs with the state regulatory Commission or the FCC, or is permitted not to file tariffs (and elects not to do so), either generally or for specific Network Elements, Combinations or Local Services, or for transport and termination of local telecommunications traffic, the terms and conditions of such tariffs as of the date on which the requirement to file such tariffs was lifted shall, to the degree not inconsistent with this Agreement, be deemed incorporated in this Agreement by reference.
- 20.4 In the event any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of either Party to perform any material terms of this Agreement, either Party may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Alternative Dispute Resolution procedures set forth in Attachment 1.

21. No Third-Party Beneficiaries

21.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action or other privilege.

22. Responsibility of Each Party

22.1 USWC and Level 3 agree to treat each other fairly, equally and in a nondiscriminatory manner for all items included in this Agreement, or related to the support of items included in this Agreement.

22.2 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at, its own expense, of all: (a) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (b) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for: (a) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (b) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

23. Assignment and Subcontracting

23.1 A Party may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a Party may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of the other Party to a one hundred percent (100%) owned affiliate company of the Party, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void.

23.2 A Party may not subcontract the performance of any obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. If any Party's obligation is performed through a subcontractor, the Party shall remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations it performs through subcontractors. A Party shall be solely responsible for payments due its subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third Party in connection with the provision of Local Services or Network Elements, or transport and termination of local telecommunications traffic hereunder shall provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor shall be deemed a third party beneficiary for any purposes under this Agreement.

24. Entire Agreement

24.1 This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

25. Severability

25.1 Subject to Section 20, Governing Law and Compliance with Laws, if any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. This Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

26. Amendments

26.1 The Parties may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an authorized officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term or any right granted to it pursuant to the Act. By entering into this Agreement, neither Party waives any right(s) granted to it pursuant to the Act.

27. Headings of No Force or Effect

27.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

28. Notices

28.1 Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally, by certified U. S. Mail or by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

Level 3: Level 3 Communications, LLC
Howard Susskind
Senior Director, Network Planning and Cost
7581 W. 103rd Avenue
Westminster, CO 80021

with copy to:

Level 3 Communications, LLC
Tom Stortz
Senior Vice President and General Counsel
1450 Infinite Drive

Louisville, CO 80027

USWC: U S WEST Communications, Inc.
Director Interconnection Compliance
1801 California, Room 2410
Denver, CO 80202

with copy to:

U S WEST Law Department
Attention: General Counsel, Interconnection
1801 California Street, 51st Floor
Denver, CO 80202

Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

29. Joint Work Product

29.1 This Agreement is the joint work product of representatives of the Parties. For convenience, various parts have been drafted in final form by one of the Parties. Accordingly, in the event of ambiguities, no inferences will be drawn against either Party solely on the basis of authorship of this Agreement or its component parts.

30. Executed in Counterparts

30.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

31. Referenced Documents

31.1 All references to Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Level 3 Practice, USWC Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any

amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Level 3 Practice, USWC Practice, or publication of industry standards (unless Level 3 elects otherwise). Should there be an inconsistency between or among publications or standards, Level 3 shall elect which requirement shall apply.

32. Survival

32.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement; any obligation of a Party under the provisions regarding indemnification, Proprietary Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination or expiration of this Agreement, shall survive cancellation, expiration, or termination thereof.

33. Successors and Assigns

33.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

34. Disclaimer of Agency

34.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.

35. Effective Date

35.1 This agreement shall become effective **February 16, 1998**,⁸ upon approval by the Commission.

36. Compliance with the Communications Law Enforcement Act of 1994 ("CALEA")

36.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

⁸ Per February 18, 1998 Order

37. Network Planning and Management

- 37.1 Either party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward each other's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. The Parties agree to provide interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with industry standards.

As discussed in this Agreement, both parties will jointly manage the capacity of Local Interconnection Trunk Groups. USWC's Trunk Servicing Group will send a Trunk Group Service Request (TGSR), or another industry standard eventually adopted to replace the TGSR, to Level 3 to trigger changes USWC determines to be necessary to the Local Interconnection Trunk Groups based on USWC's capacity assessment. Level 3 will address the request within ten (10) business days after receipt of the TGSR upon review of and in response to USWC's TGSR. At any time as a result of its own capacity management assessment, Level 3 may begin the provisioning process. The interval used for the provisioning of Local Interconnection Trunk Groups shall be no longer than the standard interval for the provisioning of similar services by USWC and shall be consistent with USWC's actual provisioning intervals for its own customers and other CLECs. Where the installation of Local Interconnection Trunk Groups is required within a time that is shorter than the standard interval, the Parties will make all reasonable efforts and cooperate in good faith to ensure that the mutually agreed upon due date is met.

- 37.2 The Parties will participate in joint forecasting and planning meetings as necessary but no less frequently than once per quarter during the first year of interconnection.

The Parties shall establish joint forecasting responsibilities for traffic utilization over trunk groups. Intercompany forecast information must be provided by the Parties to each other four times a year. The quarterly forecasts shall include forecasted requirements for each trunk group. In addition, the forecast shall include, for tandem-switched traffic, the quantity of tandem-switched traffic forecasted for each subtending end office. The Parties recognize that, to the extent historical traffic data can be shared between the Parties, the accuracy of the forecasts will improve. Forecasts shall be for a minimum of three (current and

plus-1 and plus-2) years, will use Common Language Location Identifiers, and will include a description of major network projects anticipated for the following six months that could affect the other Party. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period. This planning will include the issues of network capacity, forecasting and compensation calculation, where appropriate.

If forecasts vary significantly and the Parties are unable to reach a reconciliation, the Local Interconnection Trunk Groups shall be provisioned to the higher forecast. At the end of three months, the utilization of the Local Interconnection Trunk Groups will be reviewed and if the average Common Channel Signaling (“CCS”) utilization for the third month is under seventy-five percent (75%) of capacity, either party may issue an order to resize the trunk group, which shall be left with not less than twenty-five percent (25%) excess capacity. If the Parties agree on the original forecast and then it is determined that a trunk group is under seventy-five percent (75%) of CCS capacity on a monthly-average basis for each month of any three-month period, either party may issue an order to resize the trunk group, which shall be left with not less than twenty-five percent (25%) excess capacity. In all cases, grade of service objectives identified in this Agreement shall be maintained.

Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

- 37.3 The Parties shall cooperate and share pre-planning information, where available and in compliance with federal and state regulations, 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. Furthermore, INP numbers may only be used consistent with network efficiency and integrity, i.e., inhibitions on mass calling events.
- 37.4 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

38. Ordering

- 38.1 When ordering Resold Local Services, unbundled Network Elements, or local Interconnection, the ordering Party shall provide

sufficient detail on the service order to permit timely and efficient processing of the order. Such detail may include site locations, types of Local Services to be resold, specific Network Elements and their locations, the type, number, and location of Interconnection facilities, the type and routing of interoffice transport, (i.e., direct trunk transport or tandem switched transport), estimated peak volumes, and any optional or additional features. When the ordering Party requests facilities, routing, or optional features different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans.

- 38.2 When an ordering Party initially orders an interconnection facility, the provider will forward the appropriate facility record information necessary to identify the circuit facility assignment (CFA). On subsequent orders utilizing existing interconnection facilities, or direct trunk transport facilities, the provider will assign facility components to the interconnection facility or the direct trunk transport facility, as directed by the ordering Party.
- 38.3 A joint planning meeting will precede trunking orders. These meetings will result in the transmittal of Interconnection Service Requests (ISRs) to initiate order activity. A Party requesting tandem interconnection will provide its best estimate of the traffic distribution to each end office subtending the tandem. Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an ISR, or another industry standard eventually adopted to replace the ISR for local service ordering. Orders that comprise a major project may be submitted at the same time, in which case their implementation shall be jointly planned and coordinated. Major projects are those that require the coordination and execution of multiple orders or related activities between and among USWC and Level 3 work groups, including but not limited to the initial establishment of Local Interconnection or Meet Point trunk groups and service in an area, NXX code moves, re-homes, facility grooming, or network rearrangements.

39. Service Interruptions

- 39.1 Standards and procedures for notification of trunk disconnects will be jointly developed by the Parties within ninety (90) days of the Effective Date of this Agreement. Neither Party shall be expected to maintain active status for a trunk disconnected by the other Party for an extended or indefinite period of time.
- 39.2 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: (a) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; (b) cause damage to their plant; (c) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or (d) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service."
- 39.3 Each Party shall be solely responsible, and bear the expense, for the overall design of its services. The Party shall also be responsible for any redesign or rearrangement of its services that may be required because of changes in facilities, operations or procedures, minimum network protection criteria, and operating or maintenance characteristics of the facilities. If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide advance notice of such change to the other Party in accordance with the applicable FCC regulations. If one Party creates a circumstance causing additional costs to the other Party, the other Party may collect construction charges from the first Party.
- 39.4 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate and define a Trouble Reporting Control Office (TRCO) for such service. Each Party shall furnish a trouble reporting telephone number for the designated TRCO. This number shall have access to the location where facility records are normally located and where current status reports on any trouble reports are readily available. Current and historical trouble reports will be made available, if necessary. Alternative out-of-hours

procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

- 39.5 Where new facilities, services and arrangements are installed to rectify the service interruption, the TRCO shall ensure that continuity exists and take appropriate transmission measurements before advising the other Party that the new circuit is ready for service.
- 39.6 Before either Party reports a trouble condition, they shall use reasonable efforts to isolate the trouble.
- 39.7 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting carriers.
- 39.8 The Parties shall cooperate in isolating trouble conditions.

40. Cooperation in Minimizing Fraud

- 40.1 Each Party is liable for all fraud associated with service to its end-users and accounts. A Party is not responsible in cases of fraud by the other Party's customers. A Party is not required to make adjustments to the other Party's account in cases of fraud. The Parties will cooperate in the investigation of fraudulent use of the services provided under this Agreement and shall work cooperatively to minimize fraud associated with third-number-billed calls, calling card calls, and any other services related to this Agreement.

PART II: LOCAL SERVICES RESALE

41. Introduction

- 41.1 At the request of Level 3, and pursuant to the requirements of the Act, USWC will make available to Level 3 for resale any Telecommunications Service USWC currently provides, or may offer hereafter, at retail to customers who are not telecommunications carriers. USWC shall also provide Support

Functions and Service Functions as set forth in the Attachments to this Agreement. The Telecommunications Services, Service Functions and Support Functions provided by USWC pursuant to this Agreement are collectively referred to as "Local Service." The Local Services provided by USWC shall be equal in quality, subject to the same conditions, and within the same provisioning time intervals as USWC provides to others, including USWC's end users. Level 3 shall be responsible to USWC for all applicable charges associated with the services that Level 3 resells to an end user.

This Part, in summary form, and Attachment 2, in detail, describe several services which USWC shall make available to Level 3 for resale pursuant to this Agreement. These lists are neither all inclusive nor exclusive.

42. Local Services Resale

42.1 USWC shall apply the principles set forth in 47 C.F.R. §64.1100 to the process for end-user selection of a primary local exchange carrier. The prices charged to Level 3 for Local Service shall be the wholesale rates shown in Schedule 1 of this Agreement which have been determined on the basis of retail rates charged to subscribers for the Telecommunications Services excluding the portions thereof attributable to any marketing, billing, collection and other costs that will be avoided by USWC. Except as limited by Attachment 2, Level 3 may resell Local Services to provide Telecommunications Services to any and all classes of end-users. USWC shall ensure that all Level 3 Customers experience the same dialing parity as similarly situated customers of USWC services. USWC will notify Level 3 of any changes in the terms and conditions under which it offers Telecommunications Services at retail to subscribers who are not telecommunications service providers or carriers.

42.2 Specific Services

(a) As a grandfathered service, Level 3 may resell Centrex Plus to existing Centrex Plus customers and prior customers who have discontinued the service within the past year. At Level 3's option, Level 3 may purchase for resale the entire set of Centrex Plus features or a subset of any one or any combination of such features, tariffed or non-tariffed. Level 3 must comply with any USWC plans for transferring grandfathered customers to non-grandfathered services.

- (b) Level 3 may purchase for resale the entire set of CLASS and Custom features and functions, a subset of, or any combination of such features.
- (c) Local Services include certain Voluntary Federal Customer Financial Assistance Programs.
- (d) USWC shall provide E911 and 911 Service to Level 3, for Level 3's resale service customers.
- (e) Where USWC provides Telephone Relay Service, USWC shall make such service available to Level 3 at no additional charge, for use by Level 3 Customers who are speech or hearing-impaired.
- (f) Level 3 may purchase for resale the entire set of Advance Intelligent Network ("AIN") features or functions, or a subset or any one or any combination of such features or functions, on a customer-specific basis.
- (g) The underlying provider of a resold service shall be entitled to receive, from the purchaser of switched access, the appropriate access charges pursuant to its then effective switched access tariff. For the purposes of this paragraph, Unbundled Loops are not considered as resold services.

42.3 Support Functions

- (a) UWSC shall provide for Level 3's Local Service customers routing to Level 3's Directory Assistance, Level 3's Operator Services, and Level 3's Repair Services or their designated alternatives.
- (b) USWC shall cooperate with Level 3's Operator Services bureau in providing Busy Line Verification and Emergency Line Interrupt.
- (c) USWC shall provide access to the Line Information Database.
- (d) USWC shall cooperate with Level 3 in the provision of calling cards based on the end user's telephone line number.
- (e) Level 3 shall provide initial testing of resold facilities for new service installation and for resolution of customer complaints. As

necessary, Level 3 shall provide the results of the initial tests to USWC who shall further test the systems to determine appropriate corrective actions. The Parties shall cooperate in developing mutually acceptable test report standards.

42.4 Service Functions

(a) USWC shall provide an electronic interface for transferring and receiving Service Orders and Provisioning data and materials as outlined in the Attachments hereto.

(b) Work order processes shall meet service parity requirements.

(c) Level 3 or its agent(s) shall act as the single point of customer contact for Level 3's end user's service needs, including without limitation, sales, service, design requests, order taking, provisioning requests, change order requests, end user training, initial testing, trouble reporting, repair coordination, billing, collection, inquiry, and fraud resolution.

(d) Each Party shall provide the other Party with a single point of contact for all inquiries regarding the implementation of this Part.

(e) Level 3's representative will have real-time access to USWC Customer information to enable the Level 3 representative to perform tasks outlined on Attachments 2, 5, 6 and 9.

(f) After receipt and acceptance of a Service Order, USWC shall provision such Service Order in accordance with the business practices it employs to provide such service to other customers including its own end users and as further specified by the Intervals and Performance Standards in Attachment 11.

(g) Maintenance shall be provided in accordance with the business practices USWC employs to provide such service to other customers including its own end users and as further set forth in the requirements and standards set of Attachments 6 and 11.

(h) USWC shall provide the Customer Usage Data recorded by USWC in accordance with the requirements and standards set forth in Attachment 8.

(i) In addition to testing described elsewhere in this Section and Attachment 3, USWC shall test the electronic interface systems used to perform the functions set forth in Attachment 2 at least

sixty (60) days prior to commencement of USWC's provision of Local Service, in order to establish system readiness capabilities.

(j) USWC shall bill Level 3 for Local Service provided by USWC to Level 3 pursuant to the terms of this Part and Schedules 1 and 2. USWC shall recognize Level 3 as the customer of record for all Local Service and will send all notices, bills and other pertinent information directly to Level 3.

PART III: UNBUNDLED NETWORK ELEMENTS

43. Introduction

43.1 This Part III sets forth the unbundled Network Elements USWC will offer to Level 3 in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled Network Elements are described below and in Attachment 3. The price for each Network Element is set forth in Part VI of this Agreement.

44. Unbundled Network Elements

USWC will offer Network Elements to Level 3 on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement and the requirements of Section 251 and Section 252 of the Act.

USWC will permit Level 3 to interconnect Level 3's facilities or facilities provided by Level 3 or by third parties with each of USWC's unbundled Network Elements at any point designated by Level 3 that is technically feasible.

Level 3, at its option, may designate any technically feasible network interface at a Served Premises, including without limitation, DS0, DS-1, DS-3, STS-1, and OC-n (where n equals 1 to the largest available integer) interfaces, and any other interface described in the applicable technical references.

Level 3 may use one or more Network Elements to provide any feature, function, or service option that such Network Element is capable of providing or any feature, function, or service option that is described in the technical references identified herein, or as may

otherwise be determined by Level 3. The Network Elements may be used individually or combined to provide any telecommunications service, either a finished retail service or an intermediate service, that can be offered by means of the element.

USWC shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit Level 3 to combine such Network Element or Network Elements with another Network Element or other Network Elements obtained from USWC or with network components provided by itself or by third parties to provide telecommunications services to its customers.

For each Network Element, USWC shall provide a demarcation point (e.g., an interconnection point at a Digital Signal Cross Connect or Light Guide Cross Connect panel or a Main Distribution Frame) and, if necessary, access to such demarcation point, which Level 3 agrees is suitable. However, where USWC provides contiguous Network Elements to Level 3, USWC may provide the existing interconnections and no demarcation point shall exist between such contiguous Network Elements.

USWC shall not charge Level 3 an additional interconnection fee or demand other consideration for directly interconnecting any Network Element or Combination to any other Network Element or Combination provided by USWC to Level 3 if USWC directly interconnects the same two Network Elements or Combinations in providing any service to its own customers or a USWC affiliate, including the use of intermediate devices, such as a digital signal cross connect panel, to perform such interconnection.

The total charge to Level 3 to interconnect any Network Element or Combination to any other Network Element or Combination provided by USWC to Level 3 if USWC does not directly interconnect the same two Network Elements or Combinations in providing any service to its own customers or a USWC affiliate shall be USWC's total service long-run incremental cost of providing the interconnection.

Subsections 44.1 through 44.12 below list the Network Elements that have been identified as of the Effective Date of this Agreement. The Network Elements identified in this Part III are not exclusive.

44.1 Unbundled Loop Network Elements

An unbundled Loop establishes a transmission path with an equivalent voice frequency range of 300 to 3000 Hz between the USWC distribution frame (or its equivalent) and the end user. The transmission path characteristics should be compatible with digital transmission technology (at the DS0 level or its equivalent). An unbundled Loop may include the Network Elements of (a) a Network Interface Device, (b) Loop Distribution, (c) Loop Concentrator/Multiplexer, and (d) Loop Feeder.

44.2 Network Interface Device

The “Network Interface Device (NID)” is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The fundamental function of the NID is to establish the official network demarcation point between a carrier and its end-user customer. The NID features two (2) independent chambers or divisions which separate the service provider’s network from the customer’s inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider and the end-user customer each make their connections. The NID provides a protective ground connection, and is capable of terminating cables such as twisted pair cable.

44.3 Loop Distribution

“Loop Distribution” provides connectivity between the NID and the terminal block on the customer-side of a Feeder Distribution Interface (FDI). The FDI terminates and cross-connects the Loop Distribution and the Loop Feeder in order to provide a continuous transmission path between the NID and a telephone company Central Office. The FDI may include a Loop Concentrator/Multiplexer.

The media used for Loop Distribution may be copper twisted pair, coax cable, or single or multi-mode fiber optic cable. A combination that includes two or more of these media is also possible. The standard Network Element pricing in this Agreement applies to the most efficient configuration of media (and associated transmission technology) available for use by USWC.

Following a request by Level 3 for provision of specific Loop Distribution service, USWC must provide to Level 3 a description of the available media and the associated characteristics in a timely manner. Level 3 may accept the existing media for provision of the Loop Distribution or may require USWC to condition (or decondition) existing media to meet the transmission standards of

this Agreement. Pricing for either alternative will be at the standard rates for Network Elements. Once accepted by Level 3, USWC must provide two (2) years written notice to Level 3 prior to restructuring the provision of the service (e.g., changing the Loop Distribution service from copper twisted pairs to a fiber optic transmission path).

Where Level 3 chooses to accept neither the existing media nor the standard transmission path over the existing media, Level 3 may request provision of specific physical media (such as a copper twisted pair) for Loop Distribution. Such a request will be addressed through the BFR process and Level 3 must compensate USWC for the cost of making the specific physical facility available.

44.4 FDI and Loop Concentrator/Multiplexer

The FDI is a device that terminates the Loop Distribution and the Loop Feeder, and cross-connects them in order to provide a continuous transmission path between the NID and a telephone company central office. For loop plant that contains a Loop Concentrator/Multiplexer, the Loop Distribution may terminate at the FDI (if one exists), or at a termination and cross-connect field associated with the Loop Concentrator/ Multiplexer. This termination and cross-connect field may be in the form of an outside plant distribution closure, remote terminal or fiber node, or an underground vault.

The "Loop Concentrator/Multiplexer" is the Network Element that: (a) aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing); (b) disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing); (c) aggregates a specified number of signals or channels to fewer channels (concentrating); (d) performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); and (e) in some instances performs electrical to optical (E/O) conversion.

The Loop Concentrator/Multiplexer function may be provided through a Digital Loop Carrier (DLC) system, channel bank, multiplexer or other equipment at which traffic is encoded and decoded, multiplexed and demultiplexed, or concentrated.

The standard Network Element pricing of this Agreement assumes that FDI termination is included in Loop Distribution. Loop Feeder has been assumed to terminate on the Loop Concentrator/ Multiplexer for standard pricing in this Agreement.

44.5 Loop Feeder

The "Loop Feeder" is the Network Element that provides transmission path between: (a) an FDI associated with Loop Distribution and a termination point appropriate for the media in a central office, or (b) a Loop Concentrator/ Multiplexer provided in a remote terminal and a termination point appropriate for the media in a central office. USWC shall provide Level 3 physical access to the FDI, and the right to connect the Loop Feeder to the FDI.

For pricing purposes, Loop Feeder is assumed to terminate on a Loop Concentrator/Multiplexer. Loop Feeder must either be purchased in conjunction with Loop Concentrator/Multiplexer from USWC or Level 3 may purchase Loop Feeder separately for termination on an Level 3 Loop Concentrator/Multiplexer facility collocated at the FDI. Feeder plant which does not require a Loop Concentrator/Multiplexer (such as a copper twisted pair) will be priced as though that plant required the use of the Loop Concentrator/ Multiplexer.

The media used for Loop Feeder includes copper twisted pair, and single or multi-mode fiber optic cable. A combination that includes two or more media is also possible. The standard Network Element pricing in this Agreement applies to the most efficient configuration of media (and associated transmission technology) available for use by USWC.

Following a request by Level 3 for provision of specific Loop Feeder service, USWC must provide to Level 3 a description of the available media and the associated characteristics in a timely manner. Level 3 may accept the existing media for provision of the Loop Feeder or may require USWC to condition (or decondition) existing media to meet the transmission standards of this Agreement. Pricing for either alternative will be at the standard rates for Network Elements. Once accepted by Level 3, USWC must provide two (2) years written notice to Level 3 prior to restructuring the provision of the Loop Feeder service (e.g., upgrading multiplexers to higher bit rates).

Where Level 3 chooses to accept neither the existing media nor the standard transmission path over the existing media, Level 3 may request provision of specific media (such as a copper twisted pair) for Loop Feeder. Such a request will be addressed through the BFR process.

USWC agrees to make Loop Feeder signals available to Level 3 at the termination point in the Central Office in the same form as they

were transmitted over the Loop Feeder. For instance, analog signals over copper twisted pair will be made available to Level 3 as analog signal from the MDF. Multiplexed digital signals will be made available to Level 3 as digital signals at an appropriate bit rate (e.g., DS1) from digital signal processing units.

44.6 Local Switching

“Local Switching” is the Network Element that provides the functionality required to connect the appropriate originating lines or trunks wired to the Main Distribution Frame (MDF) or Digital Cross Connect (DSX) panel to a desired terminating line or trunk. Such functionality shall include all of the features, functions and capabilities that the underlying USWC facility providing such Local Switching function is then capable of providing, including, but not limited to: line signaling and signaling software, digit reception, dialed number translations, call screening, routing, recording, call supervision, dial tone, switching, telephone number provisioning, announcements, calling features and capabilities (including call processing), Centrex Plus, Automatic Call Distributor (ACD), AMA Recording, blocking options, Carrier pre-subscription (e.g. long distance carrier, IntraLATA toll), Carrier Identification Code (CIC) portability capabilities, testing and other operational features inherent to the switch and switch software. It also provides access to transport, signaling (ISDN User Part (ISUP) and Transaction Capabilities Application Part (TCAP)), and platforms such as adjuncts, Public Safety Systems (911), Operator Services, directory services and Advanced Intelligent Network (AIN). Remote Switching Module functionality is included in the Local Switching function. The switching capabilities used will be based on the line side features they support. Local Switching will also be capable of routing local, intraLATA, InterLATA, and calls to international customer’s preferred carrier (based on availability), call features (e.g., call forwarding), and Centrex Plus capabilities.

Local Switching also includes Data Switching. For Asynchronous Transfer Mode (ATM) and Frame Relay Service, data services switching functionality required to connect the facilities from the User to Network Interface (UNI) to either another UNI or to a communications path at the Network to Network Interface (NNI). In this case, the purpose of Data Switching is to terminate, concentrate and switch data traffic from Customer Premises Equipment (CPE) in the digital format consistent with the UNI specification for the customer. Data Switching also provides connectivity for the purpose of conveying the customer data to its final destination. The UNI and NNI are industry standard interface specifications that contain physical transmission layer requirements

for speeds and line formats; data link layer requirements for the format of the data units passed between the user and the network; and protocol requirements for control procedures used in managing the interface. Data Switching provides this functionality in two distinct formats -- ATM and Frame Relay. For ISDN Packet and Circuit Switched Data service, the data switching functionality required to connect between industry standard ISDN interfaces. In this case, the purpose of Data Switching is to terminate, concentrate, and switch data traffic from Customer Premises Equipment (CPE) in the digital format consistent with ISDN standards. Data Switching also provides connectivity for the purpose of conveying the customer data to its final destination.

44.7 Operator Services and Directory Assistance

“Operator Services” and “Directory Assistance” are the Network Elements that provide operator and automated call handling and billing, special services, customer telephone listings and optional call completion services.

Operator Service provides (a) operator handling for call completion (for example, collect, third number billing, and manual credit card calls), (b) operator or automated assistance for billing after the customer has dialed the called number (for example, credit card calls); and (c) special services including, but not limited to, Busy Line Verification and Emergency Interrupt (BLV/EI), Emergency Agency Call, Operator-assisted Directory Assistance, and Rate Quotes. Separate trunk groups will be established connecting the Parties’ operator service centers for operator-assisted busy line interrupt/verify.

“Directory Assistance” service provides local customer telephone number listings with the option to complete the call at the caller's direction.

44.8 Transport

“Common Transport” is an interoffice transmission path between USWC Network Elements. Where USWC Network Elements are connected by intra-office wiring, such wiring is provided as a part of the Network Elements and is not Common Transport.

“Dedicated Transport” is an interoffice transmission path between Level 3 designated locations. Such locations may include USWC central offices or other equipment locations, Level 3 network components, other carrier network components, or customer

premises. Dedicated Transport includes the Digital Cross-Connect System (DCS) functionality as an option.

“Signaling Link Transport” is a set of two (2) or four (4) dedicated 56 Kbps transmission paths between Level 3-designated Signaling Points of Interconnection (SPOI) that provides appropriate physical diversity.

44.9 Signaling Transfer Points

A “Signaling Transfer Point” is a signaling network function that includes all the capabilities provided by the signaling transfer point switches (STPSs) and their associated signaling links which enable the exchange of SS7 messages among and between switching elements, database elements and signaling transfer points.

44.10 Service Control Points (SCPs)/Databases

SCPs/Databases are the Network Elements that provide the functionality for storage of, access to, and manipulation of information required to offer a particular service or capability.

A Service Control Point (SCP) is a specific type of Database functionality deployed in a Signaling System 7 (SS7) network that executes service application logic in response to SS7 queries sent to it by a switching system also connected to the SS7 network. SCPs also provide operational interfaces to allow for provisioning, administration and maintenance of subscriber data and service application data. (e.g., an 800 database stores customer record data that provides information necessary to route 800 calls).

44.11 Tandem Switching

“Tandem Switching” is the function that establishes a communications path between two (2) switching facilities through a third switching facility (the tandem switch).

44.12 Unused Transmission Media

“Unused Transmission Media” is physical inter-office transmission media (e.g., optical fiber, copper twisted pairs, coaxial cable) which has no lightwave or electronic transmission equipment terminated to such media to operationalize its transmission capabilities. This media may exist in aerial or underground structure or within a building.

Dark Fiber, one type of unused transmission media, is unused strands of optical fiber. Dark Fiber also includes strands of optical

fiber existing in aerial or underground structure which have lightwave repeater (regenerator or optical amplifier) equipment interspliced to it at appropriate distances, but which has no line terminating elements terminated to such strands to operationalize its transmission capabilities. USWC may reserve any dark fiber for its own use if it can demonstrate that it has a viable plan for use of that capacity within a subsequent two-year period. USWC shall also have the right to reclaim the use of any fiber that it has unbundled and provided to Level 3 on two-year's notice if USWC can demonstrate a viable need for the capacity of that fiber. While Dark Fiber is considered a Network Element under this Agreement, additional descriptions and requirements for Dark Fiber are set forth in Attachment 4, Ancillary Functions.

44.13 Standards for Network Elements

Each Network Element shall be meet or exceed the performance requirements set forth in the technical references, as well as any performance or other requirements identified herein. If another Bell Communications Research, Inc. ("Bellcore"), or industry standard (e.g., American National Standards Institute ("ANSI")) technical reference or a more recent version of such reference sets forth a different requirement, Level 3 may elect, where technically feasible, which standard shall apply.

If one or more of the requirements set forth in this Agreement are in conflict, Level 3 shall elect which requirement shall apply.

Each Party will be responsible for implementing and maintaining its network on its side of the Interconnection Point. If and when the Parties choose to interconnect at a Meet Point, the Parties will jointly provision the fiber optic facilities that connect the two networks and shall proportionately share the financial and other responsibilities for that facility based on the reasonably negotiated Meet Point percentage.

Each Network Element and the interconnections between Network Elements provided by USWC to Level 3 shall be at least equal in the quality of design, performance, features, functions and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that USWC provides in the USWC network to itself, USWC's own customers, to a USWC affiliate, or to any other entity. If interconnection is complicated by the presence of environmental contamination or hazardous materials, and an alternative route is available, USWC shall make such alternative route available for Level 3's consideration.

Upon the request for specific point to point routing, USWC will make available to Level 3 information indicating the location and technical characteristics of USWC's network facilities including DS1 or DS3 entrance facilities (where facilities are available), virtual collocation, physical collocation, and negotiated meet point facilities. Where specific facilities are not available and USWC is required to build, construction charges will apply.

USWC shall provide to Level 3, upon reasonable request, such engineering, design, performance and other network data sufficient for Level 3 to determine that the requirements of this Section 44 are being met. In the event that such data indicates that the requirements of this Section 44 are not being met, USWC shall, within ten (10) days, cure any design, performance or other deficiency and provide new data sufficient for Level 3 to determine that such deficiencies have been cured.

USWC agrees to work cooperatively with Level 3 to provide Network Elements that will meet Level 3's needs in providing services to its customers.

Unless otherwise designated by Level 3, each Network Element and the interconnections between Network Elements provided by USWC to Level 3 shall be made available to Level 3 on a priority basis that is equal to or better than the priorities USWC provides to itself, USWC's own customers, to a USWC affiliate or to any other entity.

44.14 Bona Fide Request Process

44.14.1 Any request for interconnection or access to an unbundled Network Element not already available via price lists, tariff, or as described herein shall be treated as a Request under this Section.

44.14.2 USWC shall use the Bona Fide Request (BFR) process to determine the technical feasibility of the requested interconnection or Network Element(s) and, for those items found to be technically feasible, to provide the terms and timetable for providing the requested items. Additionally, elements, services and functions which are materially or substantially different from those services, elements or functions already provided by USWC to itself, its Affiliates, customers, or end users may, at the discretion of Level 3, be subject to this BFR process.

44.14.3 A Request shall be submitted in writing and, at a minimum, shall include: (a) a complete and accurate technical description of each requested Network Element or interconnection; (b) the desired

interface specifications; (c) a statement that the interconnection or Network Element will be used to provide a telecommunications service; (d) the quantity requested; (e) the location(s) requested; and (f) whether Level 3 wants the requested item(s) and terms made generally available.

44.14.4 Within forty-eight (48) hours of receipt of a Request, USWC shall acknowledge receipt of the Request and review such request for initial compliance with Subsection 44.14.3 above and, in its acknowledgment, advise Level 3 of any missing information reasonably necessary to move the Request to the preliminary analysis described in Subsection 44.14.5 below.

44.14.5 Unless otherwise agreed to by the Parties, within thirty (30) calendar days of its receipt of the Request and all information necessary to process it, USWC shall provide to Level 3 a preliminary analysis of the Request. During the thirty (30) day period, USWC agrees to provide weekly status updates to Level 3. USWC will notify Level 3 if the quote preparation fee, if any, will exceed \$5,000. Level 3 will approve the continuation of the development of the quote prior to USWC incurring any reasonable additional expenses. The preliminary analysis shall specify whether or not the requested interconnection or access to an unbundled Network Element is technically feasible and otherwise qualifies as a Network Element or interconnection as defined under the Act.

44.14.5.1 If USWC determines during the thirty (30) day period that a Request is not technically feasible or that the Request otherwise does not qualify as a Network Element or interconnection required to be provided under the Act, USWC shall so advise Level 3 as soon as reasonably possible of that fact, and promptly provide a written report setting forth the basis for its conclusion in no case later than ten (10) calendar days after making such determination.

44.14.5.2 If USWC determines during the thirty (30) day period that the Request is technically feasible and otherwise qualifies under the Act, it shall notify Level 3 in writing of such determination in no case later than ten (10) calendar days after making such determination.

44.14.5.3 Unless otherwise agreed to by the Parties, as soon as feasible, but no more than ninety (90) calendar days after USWC notifies Level 3 that the Request is technically feasible, USWC shall provide to Level 3 a Request quote which will include, at a minimum, a description of each interconnection and Network Element, the quantity to be provided, the installation intervals (both initial and subsequent), the impact on shared systems software interfaces, the

ordering process changes, the functionality specifications, any interface specifications, and either:

(a) the applicable rates (recurring and nonrecurring), including the amortized development costs, as appropriate, of the interconnection or Network Element; or

(b) the payment for development costs, as appropriate, of the interconnection or Network Element and the applicable rates (recurring and nonrecurring), excluding the development costs.

44.14.5.4 The choice of using either option (a) or (b) above shall be at USWC's sole discretion. A payment for development cost, however, is appropriate only where Level 3 is the only conceivable user of the functionality (including consideration of USWC as a potential user) or where the requested quantity is insufficient to provide amortization.

44.14.6 If USWC has used option (a) above in its Request quote, then, within thirty (30) days of its receipt of the Request quote, Level 3 must indicate its nonbinding interest in purchasing the interconnection or Network Element at the stated quantities and rates, cancel its Request, or seek remedy under the Dispute Resolution section of this Agreement.

44.14.7 If USWC has used option (b) above in its Request quote, then, within thirty (30) days of its receipt of the Request quote, Level 3 must either agree to pay the development costs of the interconnection or Network Element, cancel its Request, or seek remedy under the Dispute Resolution section of this Agreement.

44.14.8 If USWC has used option (b) in its Request quote and Level 3 has accepted the quote, Level 3 may cancel the Request at any time, but will pay USWC's reasonable development costs of the interconnection or Network Element up to the date of cancellation.

44.14.9 USWC will use reasonable efforts to determine the technical feasibility and conformance with the Act of the Request within the first thirty-two (32) days of receiving the Request. In the event USWC has used option (b) above in its Request quote and USWC later determines that the interconnection or Network Element requested in the Request is not technically feasible or otherwise does not qualify under the Act, USWC shall notify Level 3 within ten (10) business days of making such determination and Level 3 shall not owe any compensation to USWC in connection with the Request. Any quotation preparation fees or development costs paid

by Level 3 to the time of such notification shall be refunded by USWC.

44.14.10 To the extent possible, USWC will utilize information from previously developed BFRs to address similar arrangements in order to shorten the response times for the currently requested BFR. In the event Level 3 has submitted a Request for an interconnection or a Network Element and USWC determines in accordance with the provisions of this Section 44.14 that the Request is technically feasible, the Parties agree that Level 3's subsequent request or order for the identical type of interconnection or Network Element shall not be subject to the BFR process.

44.14.11 In the event of a dispute under this Section 44.14, the Parties agree to expedite the Dispute Resolution requirements of this Agreement.

PART IV: ANCILLARY FUNCTIONS

45. Introduction

This Part IV sets forth the Ancillary Functions that USWC will provide to Level 3 so that Level 3 may obtain and use unbundled Network Elements or USWC services to provide services to its customers.

46. USWC Provision of Ancillary Functions

USWC will provide Ancillary Functions to Level 3 on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

USWC will permit Level 3 to interconnect Level 3's equipment and facilities or equipment and facilities provided by Level 3 or by third parties at any point designated by Level 3 that is technically feasible.

Level 3 may use any Ancillary Function to provide any feature, function, or service option that such Ancillary Function is capable of providing or any feature, function, or service option that is described in the technical references identified herein, or as may otherwise be designated by Level 3.

Subsections 46.1 through 46.3 below list the Ancillary Functions that have been identified as of the Effective Date of this Agreement. Level 3 and USWC agree that the Ancillary Functions identified in this Part IV are not exclusive. Either Party may identify additional or revised Ancillary Functions as necessary to improve services to customers, to improve network or service efficiencies or to accommodate changing technologies, customer demand, or regulatory requirements. Upon the identification of a new or revised Ancillary Function, the Party so identifying the new or revised Ancillary Function shall notify the other Party of the existence of and the technical characteristics of the new or revised Ancillary Function. If the parties do not agree on the existence of and the technical characteristics of the newly identified or revised Ancillary Function, any issues that have not been resolved by the parties within thirty days of notification shall be submitted to the Dispute Resolution procedures as set forth in Attachment 1.

Within thirty (30) days of Level 3 and USWC agreeing on the technical characteristics of the new or revised Ancillary Function, the parties will attempt to agree on the rates, terms and conditions

that would apply to such Ancillary Function and the effects, if any, on the price, performance or other terms and conditions of existing Network Elements or Ancillary Functions. If the parties do not agree on rates, terms and conditions and other matters set forth herein, any issues that have not been resolved by the parties within thirty days shall be submitted to the Dispute Resolution Procedures as set forth in this Agreement. Additionally, if USWC provides any Ancillary Function that is not identified in this Agreement to itself, to its own customers, to a USWC affiliate or to any other entity, USWC will provide the same Ancillary Function to Level 3 at rates, terms and conditions no less favorable to Level 3 than those provided by USWC to itself or to any other Party. The Ancillary Functions are described below. Additional descriptions and requirements for each Ancillary Function are set forth in Attachment 4.

46.1 Collocation

“Collocation” is the right of Level 3 to Collocate, that is to obtain dedicated space in the USWC Local Serving Office (LSO) or at other USWC locations and to place equipment in such spaces to interconnect with USWC’s network. Collocation also includes USWC providing resources necessary for the operation and economical use of collocated equipment. Additional descriptions and requirements for Collocation are set forth in Attachment 4.

46.2 Right of Way (ROW), Conduits and Pole Attachments

“Right of Way (ROW)” is the right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes or other locations.

“Conduit” is a tube or protected trough that may be used to house communication or electrical cables. Conduit may be underground or above ground (for example, inside buildings) and may contain one or more innerducts.

“Pole attachment” is the connection of a facility to a utility pole. Some examples of facilities are mechanical hardware, grounding and transmission cable, and equipment boxes.

USWC shall provide Level 3 with access to the poles, ducts, rights-of-way, and conduits it owns or controls on terms,

conditions, and prices comparable to those offered to any other entity. Level 3 shall provide USWC with access to the poles, ducts, rights-of-way, and conduits it owns or controls, to the extent they relate only to local service, on terms, conditions, and prices comparable to those offered to any other entity.⁹ A Party may reserve up to 15% of the capacity of any of the poles, ducts, rights-of-way, and conduits it owns or controls if it can demonstrate that it has a viable plan for use of that capacity within a subsequent 2-year period.

46.3 Traffic Measurement

“Traffic Measurement (TM)” is the recording of call detail including, but not limited to, calling telephone number, called telephone number, time of day, date, duration, and other identifying characteristics for local telecommunications traffic.

Where available, USWC shall provide TM capabilities to Level 3 for the determination of local calling volumes originating from a USWC customer and terminating at an Level 3 customer’s premise. In addition, measurement capability for local calls which transit the USWC network from a third Party and terminate at an Level 3 end user shall be provided. The rate for TM shall be on a per call basis. The TM function includes exchange of the recorded information through standard electronic interfaces as described in Part V of this Agreement.

47. Standards for Ancillary Functions

- 47.1 Each Ancillary Function shall meet or exceed the requirements set forth in the technical references, as well as the performance and other requirements, identified herein. If another Bell Communications Research, Inc. (“Bellcore”) or industry standard (e.g., American National Standards Institute (“ANSI”)) technical reference sets forth a different requirement, Level 3 may elect, where technically feasible, which standard shall apply.
- 47.2 Each Ancillary Function provided by USWC to Level 3 shall be at least equal in the quality of design, performance, features, functions and other characteristics, including, but not limited to, levels and types of redundant equipment and facilities for diversity and security, that USWC provides in the USWC network to itself, its own customers, its affiliates or any other entity.

⁹ Per July 1, 1997 Order at 4, Issue F.

- 47.3 USWC shall provide to Level 3, upon reasonable request, such engineering, design, performance and other network data sufficient for Level 3 to determine that the requirements of this Agreement are being met. In the event such data indicates the requirements of this Agreement are not being met, USWC shall, within thirty (30) days, cure any design, performance or other deficiency and provide new data sufficient for Level 3 to determine that such deficiencies have been cured.
- 47.4 USWC agrees to work cooperatively with Level 3 to provide Ancillary Functions that will meet Level 3's needs in providing services to its customers.
- 47.5 Unless otherwise designated by Level 3, each Ancillary Function provided by USWC to Level 3 shall be made available to Level 3 on a priority basis at least equal to the priorities USWC provides to itself, its customers, its affiliates or any other entity.

PART V: ELECTRONIC INTERFACES

48. General Principles

48.1 All references and conditions to and for electronic interfaces within this Agreement and Attachments hereto shall be subject to the terms and conditions set forth in Attachment 14.¹⁰

¹⁰ Per July 1, 1997 Order at 5, Issue E; Order at 8, Issue S.

PART VI: PRICING

49. General Principles

- 49.1 All services currently provided hereunder (including resold Local Services, Network Elements and Combinations, and transport and termination of local telecommunications traffic) and all new and additional services or Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the FCC and the Commission.
- 49.2 All services that USWC provides at retail to subscribers who are not telecommunications carriers shall be made available for resale at wholesale rates. Wholesale rates shall be determined on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by USWC as described in Schedule 1.
- 49.3 The Parties are obligated to provide reciprocal compensation for the transport and termination of local telecommunications traffic. Pricing for transport and termination is described in Schedule 2. For any billing cycle, the Parties may, upon mutual agreement, waive the reciprocal compensation requirements in favor of a bill-and-keep approach.
- 49.4 All charges for Network Elements, Combinations, and interconnections between non-contiguous Network Elements (as described in Section 44.8), shall be set at the estimated level of USWC's total element long-run incremental cost ("TELRIC") of providing such Network Elements, Combinations, or interconnections including a reasonable profit. Where the TELRIC estimates assume specific relationships between Network Elements (such as between Loop Concentrator/ Multiplexer and Loop Feeder), those Network Elements must either (a) be purchased in conjunction with each other or (b) the Network Elements may be purchased separately if Level 3 provides collocated facilities for the associated element.

All such charges for Network Elements and Combinations shall be nondiscriminatory. Pricing for Network Elements is described in Schedule 3.

- 49.5 All costs incurred by USWC as a result of its of system interfaces as related to this Agreement shall be paid for and apportioned

among all of USWC's customers as a class. Such class of customers shall include, but not be limited to, all local service retailers and USWC itself. The costs shall be apportioned on a competitively neutral basis, and any fees for the use of such system(s) shall be justified by USWC as equivalent to the costs incurred by USWC for the same interactions.

- 49.6 USWC shall incur all the costs and/or expenses associated with the unbranding of "branded" local service (for either resale or unbundling of network elements). Rebranding of such services, including a reasonable arrangement for public-contact personnel of USWC providing services on behalf of Level 3, shall be compensated by Level 3 to USWC on the basis of those costs directly incurred by USWC in providing such rebranded services.
- 49.7 For the termination and transport of local telecommunications traffic, the Party providing service to the end user originating the call (originating Party) is responsible for transporting the call to the final switching point of the Party providing service to the end user to whom the call is directed (terminating Party). The originating Party also must compensate the terminating Party for the switching used to terminate the call to the premises of the end user to whom the call is directed.

The originating Party may satisfy its responsibility for transporting the call by (a) delivering the traffic over its own (or leased) facilities, (b) delivering the traffic to a point of interconnection with the terminating Party and compensating the terminating Party for transport to the final end office, or (c) delivering the traffic over joint use trunk facilities the costs of which are shared between the Parties in proportion to their use of those facilities.

The originating Party may satisfy its transport responsibility by delivering the traffic to the appropriate tandem switch (or its equivalent) of the terminating Party and compensating the terminating Party for the tandem switching and subsequent transport. However, when traffic levels to a given end office exceed the busy hour equivalent of one DS1, the Parties agree to use direct trunking to that end office.

If the Parties elect to establish two-way direct trunks, the compensation for such jointly used "shared" facilities shall be adjusted to reflect the provider's use of that facility. The adjustment in the direct trunk transport rate shall be a percentage that reflects the provider's relative use (i.e., originating minutes of use) of the facility in the busy hour. The measurement of the

“relative use” for purposes of “sharing” the cost of the direct facility shall be the provider’s originating minutes of use on the shared direct facility divided by the total of the provider’s and the other party’s originating minutes of use for each month. The rate paid to the provider of the facility shall be the cost of the facility reduced by this percentage.

Call termination rates as described in Schedule 2 will apply reciprocally for the termination of local/EAS traffic per minute of use. If a Party’s proportion of total Local/EAS traffic exchanged between the Parties is between 45% and 55% in a given month, the Parties agree that their respective call termination charges will offset one another, and no compensation will be paid for that month. The Parties agree to perform monthly joint traffic reviews, based upon mutually agreeable measurement criteria and review standards. For traffic terminated at a USWC or Level 3 end office, the end office call termination rate in Schedule 2 shall apply. For traffic delivered to a USWC or Level 3 tandem switch (or its equivalent), the tandem switching, tandem transport, and end office switching rates in Schedule 2 shall apply. For purposes of call termination, the initial Level 3 switch shall be treated as an end office switch. The Parties agree to provide each other the proper call information (e.g., originating (caller’s) number and destination (called party’s) number, duration, etc.) to enable each Party to issue bills to the other Party (as appropriate) or to the Party’s customers in a complete and timely fashion.

- 49.8 For transiting local traffic, the tandem switching, tandem transport, and end office switching rates apply to the originating party per Schedule 2 based on the use of the corresponding facilities in transiting the call. The Parties will exchange all information necessary to bill third parties for transiting local traffic.
- 49.9 In the event that Level 3 requests from USWC level of quality of service(s) that is greater than: (a) that ordered by the Commission or (b) that is provided by USWC to itself, its own customers, its affiliates or any other entity, Level 3 shall compensate USWC **in accordance with the terms and conditions set forth above in Section 8.**¹¹
- 49.10 USWC shall be entitled to recover **the incremental costs associated with construction of additional facilities that Level 3 may request. These costs are to be shared by all competing local exchange carriers that utilize the additional facilities in a**

¹¹ Per July 1, 1997 Order at 6, Issue G.

Competitively Neutral manner as defined in this Agreement. USWC, at its discretion, may defer payment due for such construction or agree on a payment plan with Level 3.¹²

49.11 USWC shall recover the costs it incurs in providing collocation at the TELRIC rate plus a reasonable allocatoin of forward-looking common costs up front. USWC, at its discretion, may defer payment due for such construction or agree on a payment plan with Level 3. If Level 3 pays USWC construction and one-time fees for such collocation and subsequently other CLECs [Level 3 proposes the following: or USWC] utilize the improvements or any other facilities paid by Level 3, any charges paid by Level 3and/or the costs to be paid shall be appropriately apportioned and/or amortized among all such benefiting carriers.¹³

49.12 The Parties will submit separate bills, pursuant to their separate tariffs or rate lists, to interexchange carriers for their respective portions of jointly provided switched access service. Based on the negotiated POI, the Parties will agree on a meet point percentage to enable the joint provisioning and billing of Switched Access Services to third parties in conformance with the Meet-Point Billing ("MPB") guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents. The Parties understand and agree that MPB arrangements are available and functional only to/from Interexchange Carriers who directly connect with the Parties' tandem(s) in each LATA. As detailed in the MECAB document, the Parties will exchange all information necessary to bill third parties for jointly handled Switched Access Services traffic via the meet point arrangement in a timely fashion. Information shall be exchanged in Exchange Message Record ("EMR") format (Bellcore Standard BR 010-200-010, as amended) on magnetic tape or via a mutually acceptable electronic file transfer protocol. The Parties will exchange records pursuant to this paragraph without additional compensation. For originating 800/888 traffic routed to an access tandem, the tandem provider will perform 800/888 database inquiry and translation functions and bill the inquiry charge and translation charge (if any) to the interexchange carrier pursuant to the applicable tariff.

50. Price Schedules

¹² Per July 1, 1997 Order at 6, Issue L.

¹³ Per July 1, 1997 Order at 7-8, Issue M.

The pricing schedules contained herein are interim in nature and shall be replaced by the pricing developed in accordance with the Commission's ruling in Docket C-1415. At such time as the pricing contained in Docket C-1415 replaces the pricing contained herein, the Parties shall true up the former charges assessed pursuant to this Agreement, retroactive for a period of one year prior to the date of true up.¹⁴

50.1 Local Service Resale - Schedule 1

The Wholesale Price Discounts (WPDs) used to calculate the prices charged to Level 3 for resold Local Services are set forth in Schedule 1 to this Agreement. USWC shall update the corresponding WPDs using the described methodology when retail rates for Local Services are changed.

Any Subscriber Line Charges (SLCs) will continue to be paid by Level 3 without discount for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLCs as found in the applicable tariffs also apply.

Level 3 will pay to USWC the PIC change charge without discount associated with Level 3's end user changes of inter-exchange or intraLATA carriers.

50.2 Reciprocal Compensation for Transport and Termination - Schedule 2

The rates for mutual compensation for transport and termination of local telecommunications traffic are set forth in Schedule 2 to this Agreement.

For local calls delivered by a Party to the appropriate terminating End Office (or its equivalent), the End Office Termination rate shall apply.

For local calls delivered by a Party to the other's Tandem switch (or its equivalent), the Tandem Switching rate, the Tandem Transport rate, and the End Office Termination rate shall apply.

For the purposes of this Section 50.2, an End Office switch (or its equivalent) is defined to be the final switching point in a Party's network before connection to the end user's Loop. The End Office provides dial tone to the end user.

¹⁴ Per July 1, 1997 Order at 3, Issue A, and at 7, Issue H.

For the purposes of this Section 50.2, a Tandem switch (or its equivalent) is defined to be any other non-End Office switching component in a Party's network which directs calls to the End Office switch (or its equivalent) for the completion of local telecommunications traffic.

50.3 Unbundled Network Elements - Schedule 3

Charges for Network Elements (on a monthly basis) will be based on a flat rate, a usage sensitive rate, or a combination of both as follows:

- Loop Distribution: flat rate per line.
- Loop Concentration/multiplexer: flat rate per line.
- Loop Feeder: flat rate per line.
- Switching: flat rate per line plus usage sensitive rate per minute of use.
- Operator Systems: usage sensitive rate per message.
- Directory Assistance: usage sensitive rate per message.
- Dedicated Transport: flat rate per trunk.
- Common Transport: usage sensitive rate per minute of use.
- Tandem Switching: usage sensitive rate per minute of use.
- Signaling Links: flat rate per link.
- Signal Transfer Point: usage sensitive rate per message.
- Signal Control Point: usage sensitive rate per message.
- Traffic Measurement: usage sensitive rate per message.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Level 3 Communications, LLC

U S WEST Communications, Inc.**

Signature

*Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

Date

Date

* Signed as ordered by the arbitrator/commission in Docket No. C-1385. Signature does not indicate agreement with all aspects of the arbitrator's decision, nor does it waive any of USWC's right to seek judicial review of all or part of the agreement, or to reform the agreement as the result of successful judicial review.

** This Agreement is made pursuant to Section 252 (i) of the Act and is premised upon the Interconnection Agreement between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. (the "Underlying Agreement"). The Underlying Agreement was approved by the Commission on August 5, 1997.

With respect to this Agreement, the Parties understand and agree:

i) The Parties shall request the Commission to expedite its review and approval of this Agreement.

ii) Notwithstanding the mutual commitments set forth herein, the Parties are entering into this Agreement without prejudice to any positions they have taken previously, or may take in the future, in any legislative, regulatory, or other public forum addressing any matters, including those relating to the types of arrangements contained in this Agreement. During the proceeding in which the Commission is to review and approve the Agreement, U S WEST may point out that it has objected, and continues to object, to the inclusion of the terms and conditions to which it objected in the proceedings involving the approval of the Underlying Agreement.

iii) This Agreement contains provisions based upon the decisions and orders of the FCC and the Commission under and with respect to the Act. Currently, court and regulatory proceedings affecting the subject matter of this Agreement are in various stages, including the proceedings where certain of the rules and regulations of the FCC are being challenged. In addition, there is uncertainty in the aftermath of the Supreme Court's decision in AT&T Corp, et al. v. Iowa Utilities Board. Based on that uncertainty, and the regulatory and judicial proceedings which will occur as a result of that decision, the Parties acknowledge that this Agreement may need to be changed to reflect any changes in law. The Agreement has not been corrected to reflect the requirements, claims or outcomes of any of the Proceedings, although the pricing does reflect the Commission's most current generic order, if any. Accordingly, when a final, decision or decisions are made in the Proceedings that automatically change and modify the Underlying Agreement, then like changes and modifications will similarly be made to this Agreement. In addition, to the extent rules or laws are based on regulatory or judicial proceedings as a result of the recent Supreme Court decision, this Agreement will be amended to incorporate such changes.

iv) Subsequent to the execution of this Agreement, the FCC or the Commission may issue decisions or orders that change or modify the rules and regulations governing implementing of the Act. If such changes or modifications alter the state of the law upon which the Underlying Agreement was negotiated and agreed, and it reasonably appears that the parties to the Underlying Agreement would have negotiated and agreed to different term(s) condition(s) or covenant(s) than as contained in the Underlying Agreement had such change or modification been in existence before execution of the Underlying Agreement, then this Agreement shall be amended to reflect such different terms(s), condition(s), or covenant(s). Where the parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.