

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

September 29, 2003

Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin,*
WC Docket No. 03-167

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am attaching an Accessible Letter released today to CLECs in Indiana and Ohio that offers them an amendment to their interconnection agreements relating to rates for collocation power. See Attachment A. Specifically, the amendments would provide (among other things) that, if a CLEC in Indiana or Ohio warrants that it will at no time draw more than fifty percent of the combined ordered capacity of the leads that are fused for a collocation arrangement, Indiana Bell or Ohio Bell (as appropriate) will bill that CLEC for DC collocation power at a monthly recurring rate of \$9.68 per ampere ("AMP") applied to fifty percent of the combined ordered capacity of the leads that are fused. This \$9.68 rate is derived by subtracting from the approved, per AMP rate in Michigan the recurring rate attributable to the Battery Distribution Fuse Bay ("BDFB"); in both Indiana and Ohio, the costs for the BDFB are already recovered through non-recurring charges. See Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, Attach. E, Exhs. 1 & 2 (Sept. 22, 2003).

SBC has offered this amendment in the hope of resolving (at least prospectively) the issues raised by NuVox Communications, Inc., in its pending complaint proceedings in both Indiana and Ohio. See NuVox Communications of Indiana, Inc., Against SBC Indiana Regarding Its Unlawful Billing Practices For Collocation Power Charges, Cause No. 42398 (IURC filed Mar. 25, 2003); In the Matter of NuVox Communications of Ohio, Inc. v. SBC Ohio, Case No. 03-802-TP-CSS (PUCO filed Mar. 24, 2003). SBC continues to believe that these complaints are simply disputes over the proper application of the parties' interconnection agreements and should, therefore, be left to the state commissions to resolve, if necessary. But

Marlene H. Dortch
September 29, 2003
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Ex Parte Presentation

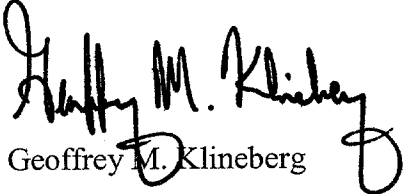
because the issue of collocation power charging practices has been raised in this proceeding, SBC is informing the Commission of these latest developments.

In addition, I am attaching a second Accessible Letter clarifying that, as of April 1, 2003, SBC Midwest has applied an engineering policy of fusing CLEC DC power leads at 125 percent of the capacity actually requested by the CLEC. See Attachment B. This letter also makes clear that any CLEC should contact its account manager with any questions about this policy.

Finally, I would like to inform you that James C. Smith and Rebecca L. Sparks, representing SBC, spoke on the telephone Friday with Richard Lerner, Deena Shetler, and Jennifer McKee regarding these same collocation power issues.

In accordance with this Commission's Public Notice, DA 03-2344 (July 17, 2003), SBC is filing this letter electronically through the Commission's Electronic Comment Filing System. Thank you for your kind assistance in this matter.

Sincerely,


Geoffrey M. Klineberg

Attachments

cc: Pam Arluk
Deena Shetler
Janice Myles
Jon Feipel
Karl Henry
Hisham Choueiki
Nicholas Linden
Layla Seirafi-Najar
Qualex International

ATTACHMENT A



Date: **September 29, 2003** Number: **CLECAM03-325**
Effective Date: **September 29, 2003** Category: **Interconnection**
Subject: **(COLLOCATION) Collocation Power Amendment Offering – IN, OH**
Related Letters: **CLECAM03-324** Attachment: **NA**
States Impacted: **Indiana, Ohio**
Response Deadline: **NA** Contact: **Collocation Account Manager**
Issuing SBC ILECS: **SBC Indiana and SBC Ohio**
Conference Call/Meeting: **NA**

This Accessible Letter notifies Indiana and Ohio CLECs of an offer by SBC Indiana and SBC Ohio to enter into an interconnection agreement amendment regarding monthly recurring collocation DC power rates and billing procedures. The form of the amendment is attached. A summary of the offer is set forth below.

Nothing in this Accessible Letter shall be deemed or considered an admission on the part of SBC Indiana and/or SBC Ohio as to, or evidence of, the unreasonableness of the rates and/or elements for collocation DC power in Indiana and Ohio, or of the manner in which SBC Indiana and/or SBC Ohio have applied or billed such rates, or any other aspect of their collocation power billing, nor shall anything in this Accessible Letter restrict SBC Indiana's and/or SBC Ohio's rights with respect to arguments or positions either may take in any pending or future proceedings. Nothing in this Accessible Letter shall affect SBC Indiana's and/or SBC Ohio's rights, claims, arguments, or positions with respect to collocation power billing.

Indiana and Ohio Collocation Power Amendment

SBC Indiana and SBC Ohio are offering an amendment in the attached form, which provides that if a CLEC represents and warrants that it will at no time draw more than 50% of the combined ordered capacity of the leads (in amperes or AMPs) that are fused for a collocation arrangement (the aggregate ordered capacity of all fused leads for that arrangement, e.g., all "A" AMPs and all "B" AMPs), SBC Indiana and/or SBC Ohio shall prospectively bill the CLEC for DC collocation power at a monthly recurring rate of \$9.68 per AMP applied to fifty percent (50%) of the combined ordered capacity that is fused.¹ By way of example, where a CLEC has ordered and SBC Indiana and/or SBC Ohio has provisioned two (2) twenty (20) AMP DC power leads that have been fused (for a combined total of forty (40) AMPs), based upon the CLEC's representation and warranty, SBC Indiana and/or SBC Ohio shall bill the CLEC the monthly recurring charge of \$9.68 per AMP multiplied by a total of twenty (20) AMPs (i.e., \$193.60 per month).²

¹ For those CLECs that operate under an effective interconnection agreement, but are purchasing a collocation arrangement(s) pursuant to a tariff offering Section 251(c)(6) collocation, the provisions of the offered amendment shall apply only to DC collocation monthly recurring power charges. In all other respects, the tariff would otherwise continue to apply to that arrangement(s).

² As set forth in Accessible Letter CLECAM03-324 dated September 29, 2003, effective April 1, 2003, SBC Midwest prospectively implemented an engineering policy of fusing CLEC DC power leads at 125% of the capacity actually requested by the CLEC. Thus, to the extent power leads were installed, or at the CLEC's request, refused after April 1, 2003, each 20 AMP lead in the example would actually be fused at 25 AMPs, for a total fused amperage of 50 AMPs, but the CLEC would be billed the monthly recurring charge for only 20 AMPs under the amendment.

The amendment also provides that, to the extent SBC Indiana and/or SBC Ohio are billing a CLEC monthly recurring rates for collocation DC power elements with respect to DC power lead(s) for which a fuse has not been installed (a "non-fused lead"), SBC Indiana and/or SBC Ohio shall prospectively cease billing for such non-fused leads if a CLEC, in writing, provides its SBC Indiana or SBC Ohio collocation account manager with notice and specific information to identify those leads claimed to be "non-fused" so to allow SBC Indiana and/or SBC Ohio to confirm that status and cease billing.

With respect to the rate and billing procedures offered by the amendment, in any instance in which a CLEC requests and signs the amendment within sixty (60) days of issuance of this Accessible Letter, such rate and billing procedure shall be effective as of the date of this Accessible Letter. Any amendment (including an MFN into an agreement/amendment) executed after sixty (60) days of issuance of this Accessible Letter shall become effective only upon execution and approval of the state commission in the ordinary course, and the rate and billing procedure set forth above shall apply prospectively only from the amendment approval date.

With respect to the non-fused lead billing procedure offered by the amendment, in any instance in which a CLEC requests and signs the amendment within sixty (60) days of issuance of this Accessible Letter and also provides SBC Indiana and/or SBC Ohio the specific written notice required under the amendment within such sixty (60) day period, such provision shall be effective for all qualifying leads contained in that notice as of the date of this Accessible Letter. Otherwise, if the CLEC fails to provide the required written notice for some or all qualifying leads within such sixty (60) days, SBC Indiana and/or SBC Ohio shall cease billing prospectively for any "non-fused" leads contained in such notice beginning the day after receipt of the required notice or on the effective date of the amendment, whichever occurs later.

The amendment provides that the rate and billing procedure set forth in the amendment shall remain effective until such time as the IURC and/or PUCO, respectively, establish, after the date of this Accessible Letter, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (*i.e.*, rate application) for SBC Indiana's and/or SBC Ohio's collocation DC power, or until expiration or termination of the term of the amendment (which shall be tied to the term of the CLEC's underlying interconnection agreement), whichever is first. By executing such amendment, both parties relinquish any right, during the term of the amendment, to a different rate and billing procedure from the date that the rate and billing procedure set forth above begins to apply between them, until such time as the IURC and/or PUCO, respectively, establish, after the date of this Accessible Letter, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure for SBC Indiana's and/or SBC Ohio's collocation DC power. The amendment, however, shall not affect either party's rights, positions, or arguments with respect to collocation power billings prior to the effective date of the rate and billing procedure provided under the amendment.

SBC Indiana and SBC Ohio reserve the right, under the terms of the amendment, to periodically inspect and/or test the amount of DC power a CLEC actually draws and, in the event the CLEC is found to have breached the representations and warranties under the amendment, to pursue remedies for breach of the amendment and the parties' interconnection agreement.

This summary is for information purposes only, and the amendment executed by the parties shall control in all respects.

To the extent a CLEC chooses not to execute the amendment, SBC Indiana and/or SBC Ohio shall continue to bill such CLEC for one hundred percent (100%) of the combined ordered capacity of the leads installed to the CLEC's collocation space (including any "non-fused" leads, where applicable), utilizing the monthly recurring rates for collocation DC power elements as set forth in the parties' interconnection agreement or the governing tariff, whichever is applicable.

For instructions about how to obtain this amendment, a CLEC should contact its collocation account manager.



IN Collo Power



OH Collo Power

Amendment - 9-29-0;Amendment - 9-29-0;

**INDIANA
DRAFT COLLOCATION POWER AMENDMENT**

**COLLOCATION POWER AMENDMENT
TO THE INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Collocation Power Amendment to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "**Amendment**") by and between Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana ("**SBC Indiana**") and _____ ("**CLEC**") is dated _____, 2003.

WHEREAS, SBC Indiana and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("**Act**") submitted for approval in the Indiana Utility Regulatory Commission's ("**IURC**") Cause No. _____, as may have been amended prior to the date hereof (the "**Agreement**");

WHEREAS, SBC Indiana has provided notice to all telecommunications carriers in Indiana that have an interconnection agreement with SBC Indiana or are purchasing Act offerings from SBC Indiana intrastate tariffs, of the availability of the collocation power offering reflected in this Amendment, via Accessible Letter _____ dated September 29, 2003, which notice expressly set forth the timing of the offering and the dependency of the change date of the collocation rate and billing terms (including rate application) on the timing of a telecommunications carrier's actions to accept that offering;

WHEREAS, CLEC wants to amend the Agreement to include the collocation power offering, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Agreement.

2. Beginning on and after the Power Change Date (as defined in paragraph 5 of this Amendment), CLEC represents and warrants that it will at no time draw more than 50% of the combined ordered capacity of the DC power leads (in amperes or "AMPs") that are fused for a collocation arrangement (the aggregate ordered capacity of all fused leads for that arrangement, e.g., all "A" AMPs and all "B" AMPs). Based upon that representation and warranty, SBC Indiana shall prospectively bill the CLEC for DC collocation power at a monthly recurring rate of \$9.68 per AMP applied to fifty percent (50%) of the ordered capacity that is fused. By way of example, where a CLEC has ordered and SBC Indiana has provisioned two (2) twenty (20) AMP DC power leads that have been fused (for a combined total of forty (40) AMPs), based upon that representation and warranty, SBC Indiana shall bill the CLEC the monthly recurring charge of \$9.68 for a total of twenty (20) AMPs (i.e., \$193.60 per month).

3. Beginning on and after the Power Change Date, to the extent SBC Indiana is billing CLEC monthly recurring rates for collocation DC power elements with respect to DC power lead(s) for which a fuse has not been installed (a "non-fused lead"), SBC Indiana shall cease billing prospectively, from the Power Change Date, for such non-fused leads if a CLEC, in writing, provides its SBC Indiana collocation account manager with specific information to identify those leads claimed to be "non-fused" so to allow SBC Indiana to confirm that status and cease billing for qualifying "non-fused" leads. Such notice must be received by SBC Indiana no later than November 29, 2003, if, pursuant to paragraph 5 hereof, the

Power Change Date is September 29, 2003. Otherwise, the notice must be received by SBC Indiana by the Amendment Effective Date (as defined herein). If CLEC fails to provide the required written information for any qualifying "non-fused" lead by the date set by the foregoing, SBC Indiana shall cease billing prospectively for such a qualifying "non-fused" leads beginning the day after receipt of the required notice.

4. If CLEC is also purchasing any collocation arrangement pursuant to Tariff I.U.R.C. No. 20, Part 23, Section 4, this Amendment shall apply to any such arrangement only as to its monthly recurring DC power charges in accordance with the Amendment's provisions; that Tariff would otherwise continue to apply to that arrangement(s).

5. The "Power Change Date" is

a. September 29, 2003, only if SBC Indiana received an original of this Amendment executed by CLEC no later than November 28, 2003 (including if CLEC is seeking to adopt this Amendment pursuant to 47 U.S.C. § 252(i)); or otherwise

b. the Amendment Effective Date.

6. SBC Indiana has the right to periodically inspect and/or test the amount of DC power CLEC actually draws and, in the event CLEC is found to have breached the representation and warranty set forth in paragraph 2, to pursue remedies for breach of this Amendment and the Agreement.

7. The provisions of this Amendment shall remain effective until such time as the Indiana Utility Regulatory Commission ("IURC") establishes, after September 29, 2003, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Indiana's collocation DC power, or until expiration or termination of this Amendment, whichever is first. If the foregoing is triggered by a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, then either Party may invoke the change of law/rate (or similar) provisions of the Agreement, as may be applicable, in accordance with such provisions. In the case of either triggering event, the provisions of this Amendment shall continue to apply until thereafter replaced by a successor interconnection agreement/amendment, as the case may be. By executing this Amendment, both Parties relinquish any right, during the term of the Amendment, to a different rate and billing procedure (including rate application) from the Power Change Date until such time as the IURC establishes, after September 29, 2003, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Indiana's collocation DC power.

8. Nothing in this Amendment shall be deemed or considered an admission on the part of SBC Indiana as to, or evidence of, the unreasonableness of the rates and elements for collocation DC power in SBC Indiana, or of the manner in which SBC Indiana has applied or billed such rates, or any other aspect of its collocation power billing, all as existed prior to the changes being made by this Amendment. Nothing in this Amendment shall restrict either Party's rights with respect to arguments or positions either may take in any pending or future proceedings. Nothing in this Amendment shall affect either Party's rights, claims, arguments, or positions with respect to collocation power billing (including rate application) for the period prior to the Power Change Date and, further, as to "non-fused" leads, prior to the date that SBC Indiana ceases to bill for any such "non-fused" leads pursuant to this Amendment.

9. The effective date of this Amendment shall be the day the IURC approves this Amendment under Section 252(e) of the Act or, absent such IURC approval, the date this Amendment is deemed approved by operation of law ("**Amendment Effective Date**"). In the event that all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the IURC, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the IURC; provided, however, that failure to reach such mutually acceptable new provisions within thirty (30) days after such suspension shall permit either Party to terminate this Amendment upon ten (10) days written notice to the other.

10. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. This Amendment will become effective as of the Amendment Effective Date, and will terminate on the termination or expiration of the Agreement. This Amendment does not extend the term of the Agreement.

11. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, adopted on February 20, 2003; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); and/or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law").

12. This Amendment constitutes the entire amendment of the Agreement and supersedes all previous proposals, both verbal and written. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. The Parties further acknowledge that the entirety of this Amendment and its provisions are non-severable, and are "legitimately related" as that phrase is understood under Section 252(i) of Title 47, United States Code, notwithstanding the fact that Section 252(i) does not apply to this Amendment.

13. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

IN WITNESS WHEREOF, each Party has caused this Amendment to be executed by its duly authorized representative.

CLEC

**Indiana Bell Telephone Company
Incorporated d/b/a SBC Indiana
By its Authorized Agent,
SBC Telecommunications, Inc.**

DRAFT

COLLOCATION POWER AMENDMENT
SBC INDIANA/CLEC
PAGE 4 OF 4
MM/DD/YY

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title *For/* President – Industry Markets

Date: _____

Date: _____

AECN/OCN # _____

DRAFT

OHIO
DRAFT COLLOCATION POWER AMENDMENT

**COLLOCATION POWER AMENDMENT
TO THE INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Collocation Power Amendment to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "**Amendment**") by and between The Ohio Bell Telephone Company d/b/a SBC Ohio ("**SBC Ohio**") and _____ ("**CLEC**") is dated _____, 2003.

WHEREAS, SBC Ohio and CLEC are parties to a certain Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("**Act**") submitted for approval in The Public Utilities Commission of Ohio's ("**PUCO**") Case No. _____, as may have been amended prior to the date hereof (the "**Agreement**");

WHEREAS, SBC Ohio has provided notice to all telecommunications carriers in Ohio that have an interconnection agreement with SBC Ohio or are purchasing Act offerings from SBC Ohio intrastate tariffs, of the availability of the collocation power offering reflected in this Amendment, via Accessible Letter _____ dated September 29, 2003, which notice expressly set forth the timing of the offering and the dependency of the change date of the collocation rate and billing terms (including rate application) on the timing of a telecommunications carrier's actions to accept that offering;

WHEREAS, CLEC wants to amend the Agreement to include the collocation power offering, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Agreement.

2. Beginning on and after the Power Change Date (as defined in paragraph 4 of this Amendment), CLEC represents and warrants that it will at no time draw more than 50% of the combined ordered capacity of the DC power leads (in amperes or "AMPs") that are fused for a collocation arrangement (the aggregate ordered capacity of all fused leads for that arrangement, e.g., all "A" AMPs and all "B" AMPs). Based upon that representation and warranty, SBC Ohio shall prospectively bill the CLEC for DC collocation power at a monthly recurring rate of \$9.68 per AMP applied to fifty percent (50%) of the ordered capacity that is fused. By way of example, where a CLEC has ordered and SBC Ohio has provisioned two (2) twenty (20) AMP DC power leads that have been fused (for a combined total of forty (40) AMPs), based upon that representation and warranty, SBC Ohio shall bill the CLEC the monthly recurring charge of \$9.68 for a total of twenty (20) AMPs (i.e., \$193.60 per month).

3. Beginning on and after the Power Change Date, to the extent SBC Ohio is billing CLEC monthly recurring rates for collocation DC power elements with respect to DC power lead(s) for which a fuse has not been installed (a "non-fused lead"), SBC Ohio shall cease billing prospectively, from the Power Change Date, for such non-fused leads if a CLEC, in writing, provides its SBC Ohio collocation account manager with specific information to identify those leads claimed to be "non-fused" so to allow SBC Ohio to confirm that status and cease billing for qualifying "non-fused" leads. Such notice must be received by SBC Ohio no later than November 29, 2003, if, pursuant to paragraph 4 hereof, the Power Change Date is September 29, 2003. Otherwise, the notice must be received by SBC Ohio by the

Amendment Effective Date (as defined herein). If CLEC fails to provide the required written information for any qualifying “non-fused” lead by the date set by the foregoing, SBC Ohio shall cease billing prospectively for such a qualifying “non-fused” leads beginning the day after receipt of the required notice.

4. The “Power Change Date” is

a. September 29, 2003, only if SBC Ohio received an original of this Amendment executed by CLEC no later than November 28, 2003 (including if CLEC is seeking to adopt this Amendment pursuant to 47 U.S.C. § 252(i)); or otherwise

b. the Amendment Effective Date.

5. SBC Ohio has the right to periodically inspect and/or test the amount of DC power CLEC actually draws and, in the event CLEC is found to have breached the representation and warranty set forth in paragraph 2, to pursue remedies for breach of this Amendment and the Agreement.

6. The provisions of this Amendment shall remain effective until such time as the PUCO establishes, after September 29, 2003, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Ohio’s collocation DC power, or until expiration or termination of this Amendment, whichever is first. If the foregoing is triggered by a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, then either Party may invoke the change of law/rate (or similar) provisions of the Agreement, as may be applicable, in accordance with such provisions. In the case of either triggering event, the provisions of this Amendment shall continue to apply until thereafter replaced by a successor interconnection agreement/amendment, as the case may be. By executing this Amendment, both Parties relinquish any right, during the term of the Amendment, to a different rate and billing procedure (including rate application) from the Power Change Date until such time as the PUCO establishes, after September 29, 2003, in a cost proceeding establishing rates for collocation provided under 47 U.S.C. § 251(c)(6) applicable to all requesting telecommunications carriers, the monthly recurring rate(s) and billing procedure (including rate application) for SBC Ohio’s collocation DC power.

7. Nothing in this Amendment shall be deemed or considered an admission on the part of SBC Ohio as to, or evidence of, the unreasonableness of the rates and elements for collocation DC power in SBC Ohio, or of the manner in which SBC Ohio has applied or billed such rates, or any other aspect of its collocation power billing, all as existed prior to the changes being made by this Amendment. Nothing in this Amendment shall restrict either Party’s rights with respect to arguments or positions either may take in any pending or future proceedings. Nothing in this Amendment shall affect either Party’s rights, claims, arguments, or positions with respect to collocation power billing (including rate application) for the period prior to the Power Change Date and, further, as to “non-fused” leads, prior to the date that SBC Ohio ceases to bill for any such “non-fused” leads pursuant to this Amendment.

8. The effective date of this Amendment shall be the day this Amendment is filed with the PUCO (“**Amendment Effective Date**”), and is deemed approved by operation of law on the 31st day after filing. In the event that all or any portion of this Amendment as agreed-to and submitted is rejected and/or modified by the PUCO, this Amendment shall be automatically suspended and, unless otherwise mutually agreed, the Parties shall expend diligent efforts to arrive at mutually acceptable new provisions to replace those rejected and/or modified by the PUCO; provided, however, that failure to reach such mutually acceptable new provisions within thirty (30) days after such suspension shall permit either Party to terminate this Amendment upon ten (10) days written notice to the other.

9. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. This Amendment will become effective as of the Amendment Effective Date, and will terminate on the termination or expiration of the Agreement. This Amendment does not extend the term of the Agreement.

10. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, its rights under the United States Supreme Court’s opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit’s decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC’s Triennial Review Order, adopted on February 20, 2003; the FCC’s Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); and/or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law (“Illinois Law”).

11. This Amendment constitutes the entire amendment of the Agreement and supersedes all previous proposals, both verbal and written. To the extent there is a conflict or inconsistency between the provisions of this Amendment and the provisions of the Agreement (including all incorporated or accompanying Appendices, Addenda and Exhibits to the Agreement), the provisions of this Amendment shall control and apply but only to the extent of such conflict or inconsistency. The Parties further acknowledge that the entirety of this Amendment and its provisions are non-severable, and are “legitimately related” as that phrase is understood under Section 252(i) of Title 47, United States Code, notwithstanding the fact that Section 252(i) does not apply to this Amendment.

12. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

IN WITNESS WHEREOF, each Party has caused this Amendment to be executed by its duly authorized representative.

CLEC

**The Ohio Bell Telephone Company d/b/a SBC
Ohio
By its Authorized Agent,
SBC Telecommunications, Inc.**

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title *For/* President – Industry Markets

Date: _____

Date: _____

AECN/OCN # _____

DRAFT

COLLOCATION POWER AMENDMENT
SBC OHIO /CLEC
PAGE 4 OF 4
MM/DD/YY

DRAFT

ATTACHMENT B

