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November 21, 2000

HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street S.W., CY-A257
Washington, D.C. 20554

Re: *Oral Ex Parte*

In the Matter of Joint Applications of NorthPoint Communications Inc.
and Verizon Communications for Authority Pursuant to Section 214 of the
Communications Act of 1934, as Amended, to Transfer Control of Blanket
Authorization to Provide Domestic Interstate Telecommunications
Services as a Non-Dominant Carrier, CC Docket No. 00-157

Dear Ms. Salas:

This letter is to notify you that on Friday November 17, 2000, representatives of the Commercial Internet eXchange Association (CIX), a trade association that represents 125 Internet Service Provider (ISP) networks, which handle approximately 75 percent of the United States' Internet traffic as well as much of the world's backbone Internet traffic¹ met with Federal Communications Commission staff members to discuss the market competition between T-1 and symmetrical digital subscriber line (SDSL)

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

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transmission, from the ISP perspective. In particular, the participants were: Pieter Van Leeuwen, Joel Rabinovitz, and Paula Silberthou of the FCC's Office of the General Counsel; Ben Childers, Jessica Rosenworcel, Daniel Shiman, and Henry Thaggart of the Common Carrier Bureau; Barbara A. Dooley, President of CIX; and Ronald L. Plessner, and Vincent M. Paladini of Piper Marbury Rudnick & Wolfe LLP, counsel to CIX.

In particular, the discussion involved the following issues:

- ISPs generally use T-1 and SDSL services to provide broadband access to their customers, and use larger capacity transmission facilities, such as DS-3, to connect to their Internet backbone providers, such as UUNET or PSInet.
- ISP broadband customers subscribing to T-1 or SDSL service are generally business service customers, some of whom can be small and cost-sensitive. These customers would be satisfied by SDSL solutions, but because of competition, not technology-related issues, they must subscribe to T-1 service rather than SDSL.
- SDSL's "quality of service" limitations are substantially a function of the ILEC's control over the local facilities and the handicaps that competitors face with respect to access to those local facilities. Where both T-1 and SDSL are equally available, SDSL generally provides a lower-cost alternative to T-1 for the provision of high-speed Internet access.
- Verizon magnifies too much the "distinctions," including "committed information rate," "mean-time to repair," and price, between T-1 and SDSL products, in an attempt to substantiate its position that the two products do not compete. Those distinctions, however, are illusory, unsubstantial, irrelevant to many ISP customers, and generally symptomatic of competition-related issues affecting competitive SDSL providers, rather than any inherent differences in the functionality offered by the two technologies.
- From the ISP perspective, SDSL provides a lower-price alternative to T-1, where SDSL is available. As CIX indicated in its Comments filed in this proceeding, there will be approximately 5.7 million digital subscriber line (DSL) customer lines in service by the year 2003. Many of those lines will be SDSL, and used for high-speed Internet access. If SDSL were not available as a technological alternative, a substantial portion of those SDSL lines would be provisioned as T-1 lines. Consequently, SDSL competes with T-1 for the provision of high-speed Internet access by ISPs.



- Verizon is already demonstrating that it will not negotiate with ISPs to establish fair DSL resale rates. Based on its prior and current behavior, it is likely that Verizon's unmitigated control of NorthPoint will result in a similar denial of ISP access to SDSL services on rates and terms that would enable ISPs to competitively resell those services.
- CIX reiterates its support for the conditions that it proposed in the Comments it filed earlier in this proceeding. CIX also provides with this letter a copy of the Texas Internet Service Providers Association (TISPA) Settlement Agreement with SBC Communications as a further example of conditions that support the ISP interest in access to high-capacity connections to their customers.

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206(b)(1), an original and two copies of this letter and enclosure are being provided to you for inclusion in the public record of the above-referenced proceeding.

Respectfully,

Vincent M. Paladini

Enclosures

/vmp

cc: Dorothy Attwood
Michelle Carey
Ben Childers
Joel Rabinovitz
Glenn Reynolds
Jessica Rosenworcel
Daniel Shiman
Paula Silberthou
Henry Thaggart
Pieter Van Leeuwen

Texas Internet Service Providers Association

TISPA Withdraws Complaint Filed With Texas PUC As Result of Joint Agreement

SAN ANTONIO (June 14, 2000) - In a filing with state regulators today, the Texas Internet Service Providers Association (TISPA) and SBC Communications jointly announced a comprehensive agreement to improve the ability of independent ISPs to bring broadband DSL to Texas consumers. The agreement addresses concerns raised by TISPA regarding marketing and handling of orders for SBC's DSL service. DSL service is used by ISPs to provide users with high-speed Internet access over existing telephone wires.

TISPA asked the Public Utility Commission of Texas (PUC) to dismiss its complaints against Southwestern Bell as a result of the agreement, reached Tuesday. "SBC and its various companies have responded constructively to our concerns about availability and prompt delivery of DSL service to ISPs," said David Robertson, president of TISPA. "In this groundbreaking agreement, SBC has fully agreed to work together with ISPs to meet Texas' growing demand for broadband services across the state, in both urban and rural markets. In fact, this agreement not only benefits Texas, but twelve other SBC states as well. Unlike cable modem Internet, which presently is closed to competition, the DSL marketplace offers opportunities for large and small providers, meaning more ISP choices for consumers and greater economic benefits for local communities." "The ISP community represents an important distribution channel for SBC and our various affiliates," said David Lopez, president of SBC's Texas operations, "The channel is a key part of SBC's overall DSL strategy and our ability to meet our commitment to being the country's broadband leader. Working together with TISPA and participants in our ISP marketing program, we have again shown that SBC's local markets are open to competition and that Texans have a choice when selecting their DSL-based Internet service provider, as well as their telecommunications provider. Our work with TISPA shows the advantages of DSL technology as opposed to cable modem technology." Discussions between SBC and TISPA and its members focused primarily on three areas: more favorable DSL pricing, changes to the process for obtaining information on DSL availability, and changes to the DSL ordering/provisioning processes. Today's announcement includes several important initiatives that will benefit ISPs in Texas:

- DSL capable loop qualification procedures that reduce the manual intervention formerly required to process ISP DSL orders.
- Introduction of new programs designed to streamline the DSL ordering process for ISPs.
- Additional competitive pricing promotions and connectivity options that will better allow ISP marketing program participants to compete in the rapidly expanding DSL service market, including aggregation of purchase volumes to take advantage of discount pricing.
- Broader communications channels for ISPs, including a toll-free telephone number, designated "ombudsman" and retention of an independent consultant to assist with revisions to Southwestern Bell's ISP Partnership Program.
- Agreement to maintain ongoing communications on the status of SBC's ISP marketing program and ways to improve it, including a private expedited dispute resolution process.

Founded in 1995, the Texas ISP Association is the country's largest association for Internet access providers. TISPA advocates the interests of all ISPs offering service in Texas, their customers, and the industry in general. SBC Communications Inc. is a global communications leader. Through its subsidiaries' trusted brands - Southwestern Bell, Ameritech, Pacific Bell, SBC Telecom, Nevada Bell, SNET and Cellular One - and world-class network, SBC's subsidiaries provide local and long-distance phone service, wireless and data communications, paging, high-speed Internet access and messaging, cable and satellite television, security services and telecommunications equipment, as well as directory advertising and publishing. In the United States, the company currently has 94.1 million voice grade equivalent lines, 11.7 million wireless customers and is undertaking a national expansion program that will bring SBC service to an additional 30 markets. Internationally, SBC has telecommunications investments in 22 countries. With more than 208,000 employees, SBC is the 13th-largest employer in the U.S., with annual revenues that rank it among the largest Fortune 500 companies.

For a complete copy of the settlement agreement, [click here](#).

For more information contact:

TISPA
Dave Robertson
210.260.3283

SBC Communications
Saralee Boteler
210-351-3473

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this the ___ day of June, 2000 by and between the Texas Internet Service Providers Associations, for and on behalf of its members ("TISPA") and SBC Operations, Inc., SBC Advanced Solutions, Inc. and Southwestern Bell Telephone Company ("SBC"), hereinafter sometimes collectively referred to as the "Parties".

Recitals

WHEREAS, SBC offers advanced telecommunications services, including digital subscriber line service ("DSL") and traditional services for sale to the public;

WHEREAS, Internet Service Providers ("ISPs") and end users purchase telecommunications services, including both traditional and advanced telecommunications services, from carriers to provide or use enhanced or information services;

WHEREAS, SBC created a sales representative program for ISPs to sell SBC DSL service (the "Partnership Program");

WHEREAS, SBC provides the processes, systems and personnel necessary to determine the availability of SBC's DSL service to particular end users, the process for ordering of SBC's DSL and performs the installation and provisioning SBC's DSL service;

WHEREAS, affiliates of SBC provide enhanced or information services, including Internet access, to end user customers;

WHEREAS, TISPA represents numerous ISPs from throughout the state of Texas, including some ISPs who purchase and/or sell SBC DSL and/or participate in the Partnership Program;

WHEREAS, TISPA has presented to the Public Utility Commission of the State of Texas ("TPUC"), the Federal Communications Commission ("FCC") and the Commerce Committee of the U.S. House of Representatives ("Commerce Committee") numerous complaints regarding practices, actions and pricing terms that it believes to be unlawful, regarding *inter alia*, the manner in which SBC prices DSL to ISPs, provides DSL qualification processes, obtains DSL orders, installs DSL service, markets SBC's enhanced and information services, and implements the Partnership Program, and other issues with regard to provision of and access to traditional telecommunications services;

WHEREAS, SBC denies the validity of such complaints; and

WHEREAS, SBC and TISPA desire to resolve the disputed matters between SBC and TISPA and significantly improve the relationship between SBC and all ISPs;

NOW, THEREFORE, in consideration of promises and mutual covenants contained herein, and for the mutual benefits to be derived from this Agreement, the Parties hereby agree as follows:

I.**Confidentiality**

- 1.1 Except as mutually agreed to in writing by the Parties, the matters set forth herein shall be kept confidential and shall not be disclosed outside the Parties' respective entities except as required by law; provided, however, the substance of the terms of this Agreement may be informally disclosed to the FCC and TPUC on mutually agreeable terms.

II.**Definitions**

- 2.1 For purposes of this Agreement, the below terms shall have the following meanings:

- 2.1.1 "Advanced services" shall mean intrastate or interstate wireline telecommunications services, such as ADSL,

IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an SBC Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include (1) data services that are not primarily based on packetized technology, such as ISDN, (2) x.25-based and x.75-based packet technologies, or (3) circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.

- 2.1.2 "Another ISP" shall be deemed to include all other ISPs, including any Internet service operations Affiliate of SBC.
- 2.1.3 "Affiliates" shall mean companies with common majority ownership or effective control. For purposes of this agreement only, Prodigy Communications Corporation, and any enhanced or information service provider in which SBC directly or indirectly owns or controls five per cent (5%) or more of the voting shares shall be deemed affiliates of SBC.
- 2.1.4 "ASI" shall mean SBC Advanced Solutions, Inc.
- 2.1.7 "DSL" shall mean Digital Subscriber Line service, including but not limited to Asynchronous Digital Subscriber Line ("ADSL") service.
- 2.1.8 "Enhanced service" shall be as defined in 47 C.F.R. § 64.702 of the FCC's rules.
- 2.1.9 "FCC" shall mean the Federal Communications Commission.
- 2.1.10 "Information service" shall be as defined in § 153(20) of the federal Telecommunications Act of 1996.
- 2.1.11 "ISP" shall mean Internet Service Provider, regardless of whether such ISP is a Partnership Program participant.
- 2.1.12 "Partnership Program" shall mean Southwestern Bell Telephone Company's DSL Partnership, sometimes referred to as the ISP Partnership Program, and any future alternate sales channel program, regardless of the name that may be attached, made available to ISPs for the purpose of facilitating sales of SBC DSL service, pursuant to which ISPs have the opportunity to earn commissions for sales of DSL and other data products.
- 2.1.13 "Subsidiaries" shall mean legal entities in which a Party owns a majority share.
- 2.1.14 "SBC" shall mean SBC Operations, Inc., Southwestern Bell Telephone Company, SBC Advanced Solutions, Inc., any other persons, firms, partnerships, corporations, or other affiliated legal entit(ies) that interact with enhanced or information service providers on behalf of SBC or manage SBC's relationship(s) with

enhanced or information service providers, and their affiliates, subsidiaries, representatives, agents, servants, officers, directors, attorneys and successors.

2.1.15 "SWBT" shall mean Southwestern Bell Telephone Company.

2.1.16 "Telecommunications service" is as defined in § 153(46) of the federal Telecommunications Act of 1996, and includes both advanced and traditional telecommunications services.

2.1.17 "TISPA" shall mean the Texas Internet Service Providers Association, its member companies (both collectively and individually), representatives, agents, servants, officers, directors, attorneys, successors and assigns of any of the foregoing, and any other persons, firms, partnerships, corporations, or other legal entity for which the Texas Internet Service Providers may be legally responsible or who may be responsible for the acts of the Texas Internet Service Providers.

2.1.18 "TISPA Complaints" shall mean and refer to the matters made the subject of TISPA's Reply Comments to FCC Docket No. 00-4 dated February 22, 2000, as well as any other complaints presented by TISPA on behalf of its members in advance of this settlement, including but not limited to the compilation dated April 19, 2000, which reflects that it was provided to the TPUC and the House Commerce committee "as a source of information," and the summary of TISPA concerns, dated March 13, 2000, which was provided by TISPA to SBC during the initial meetings between the Parties regarding these matters.

2.1.19 "TPUC" shall mean the Texas Public Utilities Commission.

2.1.20 "Traditional telecommunications service" shall mean all telecommunications services that are not Advanced services, including, but not limited to analog and digital services such as ISDN.

III.

SBC Commitments

3.1 **Nondiscrimination:**

3.1.1 Consistent with its obligations under federal and state tariffs, rules and regulations, SBC shall provide all ISPs with nondiscriminatory access to DSL qualification information, network deployment information, and ordering information. SBC shall not unfairly discriminate in the processing of orders, or provisioning of advanced services. SBC shall also comply with all federal and state nondiscrimination, provisioning, availability and pricing requirements pertaining to advanced or traditional telecommunications services to the extent such requirements apply.

3.2 **Communications:**

- 3.2.1 SBC agrees that on an ongoing basis, it will maintain a toll-free telephone number and other input channels to receive ISP issues and concerns with respect to their dealings with SBC and will provide dedicated staffing to address these issues and concerns.
- 3.2.2 SBC agrees to provide monthly updates to TISPA and Partnership Program participants, and meet with TISPA representatives, at the times and locations mutually agreed to by the Parties, to discuss ISP issues and provide information regarding SBC services, corporate structure and other issues which SBC in good faith believes may affect telecommunications services provided to or for ISPs in Texas, including but not limited to anticipated regulatory filings and legislative actions. The purpose of these updates is, to the best of SBC's belief, to fully inform ISPs of information and services available to them under federal and state statutes, rules, programs, policies and tariffs.
- 3.2.3 SBC and TISPA will cooperate to informally and actively address and resolve complaints raised by one Party about the actions of the other Party, and will engage in constructive planning, outreach and market development to better benefit the public interest, communities and consumers. The goal is to promptly identify areas of potential conflict and to resolve such issues without the need of divisive and costly legislative, regulatory or judicial intervention. To implement the cooperative endeavor, each Party shall name a specific individual that one Party may directly contact to initiate discussions. Each Party shall also nominate, in advance, a group of individuals authorized to meet, negotiate, isolate and preliminarily resolve matters by taking interim action while each Party obtains authority to implement a permanent solution acceptable to both Parties. SBC and TISPA commit to invoke the mechanism of the cooperative endeavor when either believes in good faith that a proposal it intends to make for legislation, or regulatory or judicial action, or other action in the telecommunications services markets, may adversely and materially affect the legal rights, duties or obligations of the other Party. Except as otherwise stated in this Agreement, nothing herein shall be construed to require either party to notify the other in advance of anticipated requests for legislative, regulatory or judicial action that said party believes in good faith do not materially and adversely affect the other.

3.3 Dispute Resolution:

- 3.3.1 SBC shall establish an "Ombudsman Program" or other dispute resolution program to receive complaints from individual ISPs and to deal with them in an expedited and reasonable fashion.
- 3.3.2 Within the Partnership Program, SBC shall establish a dispute resolution procedure that will allow for expedited, neutral resolution to conflicts arising out of the Partnership Program agreement.

3.4 ISP Marketing:

Unless otherwise consented to in writing by an ISP:

- 3.4.1.1 SBC shall not use information provided to it by an ISP to solicit sales of Another ISP's service, subject to the following limitations: This Agreement imposes no obligation upon SBC with respect to information which (a) was in the possession of SBC without restriction before receipt from the ISP; (b) is or becomes a matter of public knowledge through no fault of SBC; (c) is rightfully received by SBC from a third party without a duty of confidentiality; (d) is disclosed by the ISP to a third party without a duty of confidentiality on the third party; (e) is independently developed by SBC; (f) is disclosed by SBC with the ISP's prior written approval; or (g) is disclosed to SBC or may be used by SBC with the consent of the end-user customer to which the information applies. This provision is not intended to permit SBC to obtain permission to use the restricted

information after the use is made.

3.4.1.2 SBC agrees that, upon request by an ISP, SBC shall provide such customer information derived from SWBT network databases as may be useful to the marketing of ISP or DSL services where such disclosure is permitted by law and applicable regulation. SBC reserves the right to assess to that ISP a reasonable charge for the collection and provision of such information.

3.4.2 SBC shall establish a group of service representatives who will be responsible for interacting with nonaffiliated ISPs and their customers regarding orders and order status and who shall not solicit the sale of Another ISP's service while performing such interactions. SBC shall ensure that business methods and procedures exist that must be followed by this group prohibiting such solicitation, the violation of which will result in discipline, up to and including dismissal.

3.4.3 SBC shall establish methods and procedures for SBC technicians installing DSL services for an ISP, whether an SBC employee or contracted installer, (i) which prohibits the disparagement of an ISP's service; (ii) which prohibits sale or promotion of Another ISP or ISP services while installing DSL service for such ISP; and (iii) which prohibits the SBC technicians from installing, or offering to install, computer software used by the affiliated ISP. The violation of these methods and procedures shall result in disciplinary action, up to and including dismissal of the employee or termination of the contracted installer. Nothing in this Agreement shall preclude the SBC technician from providing information to the customer pertaining to Another ISP service when such information is provided in response to a specific inquiry initiated by the customer. The parties agree to negotiate in good faith to develop even-handed guidelines pertaining to the provision of information as set forth in the preceding sentence.

3.4.4 SBC shall establish methods and procedures for employees, agents and contractors who are responsible for receiving or disposing of trouble inquiries (i) which prohibit the disparagement of an ISP's service, and (ii) which prohibit the sale or promotion of the affiliated ISP's service. The violation of these methods and procedures shall result in disciplinary action, up to and including dismissal of the employee. Nothing in this Agreement shall preclude the employee, agent or contractor from referring the customer to the affiliated ISP in response to a specific inquiry initiated by the customer about the affiliated ISP's service.

3.5 Volume Aggregation Program

3.5.1 SBC will allow ISPs to aggregate their individual purchase volumes of DSL via ordering or purchase by one or more legal entit(ies) ("the Aggregating Entit(ies)") so as to allow such ISPs to take advantage of volume discount pricing. Such aggregate purchasing shall be known herein as "the Volume Aggregation Program". Individual ISPs in the Volume Aggregation Program are not eligible for participation in the Partnership Program. The Aggregating Entit(ies) shall be treated as any other ISP and therefore shall be subject to all restrictions and eligible for all benefits of any programs available to other similarly situated ISPs. The Aggregating Entit(ies) shall be responsible for the administration of all billing and collection arrangements among the participating ISPs, including but not limited to acquisition of necessary financial commitments. It is agreed and understood, however, that SBC retains reasonable discretion to determine the financial viability of the Aggregating Entit(ies) to meet any potential shortfall liabilities, as well as other relevant and commercially reasonable factors bearing on the viability of any such relationship. It is further understood and agreed that such aggregation will be conditioned upon the offer by the Aggregating Entit(ies) of commercially reasonable, reliable assurances of ability to pay and otherwise to meet such contractual obligations in full as are imposed by volume discount contracts offered to ISPs individually, including but not limited to requirement of the creation of a single purchasing and billing entity.

3.5.2 SBC shall make available to the Aggregating Entit(ies) the purchase of DSL on reasonably nondiscriminatory terms and conditions. Prior to January 1, 2002, if SBC's standard pricing for its affiliated ISP changes, , then SBC shall notify the Aggregating Entit(ies) of such change(s) and shall make proportionally similar terms and conditions available to the Aggregating Entit(ies). After that date, if SBC changes its standard

pricing for its affiliated ISP, the Parties agree that they will negotiate in good faith to create appropriate pricing for the Aggregating Entit(ies).

- 3.5.3 Notwithstanding anything to the contrary herein, this Agreement shall not preclude other arrangements between the Parties that provide for aggregation of orders for purposes of meeting volume commitments but involve billing to and payment responsibility by individual ISPs, nor shall this paragraph be construed as a commitment by SBC to enter into such arrangements.

3.6 OSS. To the extent technically feasible, unaffiliated ISPs shall be provided access to an order entry system to electronically process orders for SBC's DSL service, which is intended to include flow-through of such orders. The parties disagree whether economic feasibility is a relevant factor in determining technical feasibility. During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA regarding the details of such order entry system. If the Parties cannot reach agreement on the details during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days.

3.7 DSL Qualification Process:

- 3.7.1 SBC shall maintain and monitor all systems currently utilized, or which may be developed in the future, to ensure that information provided by any ISP associated with the verification of DSL qualification is not made available to another ISP. SBC will continue to work with ISPs to develop systems, methods and procedures to expedite and make information regarding deployment or availability of SBC DSL service to end users more readily accessible to ISPs and the Aggregating Entit(ies).

3.8 Ordering Process

- 3.8.1 SBC will provide a system to ISPs and the Aggregating Entit(ies) whereby the virtual path and virtual connection information necessary to process DSL orders is automatically provided in the ordering process. Said system shall be designed so as to permit ISPs and the Aggregating Entit(ies) to provide input and changes to such information, subject to the limitations of the system's design and considerations of economic efficiency. SBC further agrees to provide a reasonable amount of training to ISPs and the Aggregating Entit(ies) on how to use such system.

3.9 Partnership Program:

3.9.1 Partnership Agreement:

3.9.1.1 SBC agrees to consult with ISPs and continue working with an outside consulting firm to redesign and restructure the Partnership Program. Nothing contained herein, however, shall be construed in any way as an obligation on the part of SBC to continue the Partnership Program. SBC may, at any time at its sole discretion, terminate the Partnership Program and any agreements thereunder, in accordance with the Partnership Program agreements.

3.9.1.2 Immediately upon the execution of this Agreement and until August 1, 2000, in exchange for a release of any claims which may have arisen out of the entering into, administration and/or terms of the Partnership Program agreement, any current participant in the Partnership Program may terminate their Partnership Program contract without incurring any penalties or other liability that

may otherwise have been provided for under the Partnership Program agreement.

3.9.2 ATM Connectivity:

3.9.2.1 In exchange for a release of any and all claims that may have arisen out of the entering into or the administration of the Partnership Program agreement, for a period of 90 days from execution of this Agreement, SBC will agree to allow any Partnership Program participant to terminate its existing ATM connection contract without incurring early termination fees. In the event the participant contemporaneously enters into an alternative ATM connection agreement with SBC (minimum of DS1 capacity), any fees associated with the institution of such new connection shall be waived. In the event the participant does not enter into an alternative agreement for ATM connectivity with SBC contemporaneously with the termination of their current ATM connection contract, standard reconnection and installation fees will apply. SBC reserves the right to limit participation in the Partnership Program to those ISPs that have acquired and continue to maintain ATM connectivity with SBC. Unless otherwise negotiated between the ISP and SBC, all amounts previously charged for ATM connection service in accordance with that agreement will remain due and payable and the ISP shall remain responsible for all services up to the time of termination. SBC agrees to review the situation of each Partnership Program participant to make that ISP whole for charges paid for the unused capacity previously contracted, up to a maximum credit for ten (10) months of the difference between the current and prior capacity charges. SBC commits to attempt to resolve all such claims in an equitable manner, taking into account *inter alia* that ISP's usage in each of the prior months.

3.9.3 DSL Pricing:

3.9.3.1 From the effective date of this agreement until the SBC Broadband Capabilities Gateway ("BCG") is available to ISPs, SBC shall make DSL service available to customers of members of the Partnership Program who purchase a one-year DSL service arrangement for a price of \$36 per line. (As used in this clause, "DSL" is limited to service featuring downstream speed of 384 kbps to 1.5 mbps, and 128 kbps upstream.) Said prices shall apply whether the customer's service is a new service request or a renewal of a one-year contract. All other fees and expense will still apply, including early termination fees.

3.9.3.2.1 For participants in the Partnership Program that commit to using SBC's BCG, beginning August 1, 2000, SBC will make available the following interim pricing: (a) \$32 per one-year DSL service arrangement, where the ISP uses or commits to more than 1 and fewer than 500 total DSL service arrangements; (b) \$30 per DSL service arrangement if the ISP commits to 500 or more DSL service arrangements.

3.9.3.2.2 When SBC's Broadband Capabilities Gateway ("BCG") is made available to ISPs, and the program is completely explained to the ISP community, each ISP shall decide whether to commit to utilizing the BCG. The BCG will enable SBC to make different pricing for DSL available, depending upon the speed of the service requested, the commitment to utilize the BCG, and the volume of annual DSL sales to which an ISP is willing to commit. SBC shall endeavor to complete the BCG by early fourth quarter 2000, but makes no representations regarding the actual date of availability. If the ISP chooses not to utilize the BCG at the time it is offered, the interim prices offered pursuant to 3.9.3.2 above shall no longer apply to that ISP. If SBC makes price changes to its DSL product prior to the availability of the BCG, SBC agrees to renegotiate the pricing agreed to herein.

3.9.3.3 Notwithstanding anything to the contrary herein, SBC agrees that all non-SBC separated,

integrated or affiliated ISPs, including any ISP signatories to this agreement, retain all of their rights under state and federal law and regulation as it pertains to enhanced or information services, including but not limited to those rights, duties and obligations resulting from the federal Telecommunications Act of 1996, Open Network Architecture and Comparably Efficient Interconnection and the *Computer Inquiry* series of decisions by the FCC, the Public Utility Regulatory Act and rules promulgated by the TPUC.

3.9.4 Commissions and Sales Awards:

3.9.4.1 Until August 1, 2000, participants in the Partnership Program will continue to earn double their contractual commissions for DSL sales, at which time commissions will return to the contractually agreed upon rate.

3.9.4.2 Until August 1, 2000, participants in the Partnership Program will continue to receive a bounty of \$175 per installed DSL line.

3.9.4.3 SBC agrees to provide commissions and bounties to participants in the Partnership Program as appropriate and indicated by market conditions.

3.10 LATA-wide calling capability for traditional telecommunications service customers:

3.10.1 During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA the development of a service that allows an ISP to collect telecommunications service calls from customers throughout a calling scope to a single point of presence in a LATA without using SBC's managed modems or subscribing to frame relay or ATM service, and free of toll charges. Said offering shall be designed to enhance the availability of Internet access in rural areas. If the Parties cannot reach agreement on the service offering during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days. Thereafter, TISPA is free to exercise such rights as it may have to initiate a proceeding to investigate the propriety of such an offering.

3.11 ISDN-PRI calling scope and construction charges:

3.11.1 During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA aspects of SBC's ISDN-PRI service that would allow an ISP to choose between the calling scope associated with the rate center in which the serving switch is located and the calling scope associated with the rate center in which the purchaser is located. SBC also shall negotiate in good faith with TISPA the applicability of special construction charges pursuant to Section 9 of its Texas General Exchange Tariff on a customer requesting ISDN-PRI service. If the Parties cannot reach agreement on these changes during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days. Thereafter, TISPA is free to exercise such rights as it may have to initiate a proceeding to investigate the propriety of such an offering.

3.11.2 Seamless transfer of customer's choice of ISP provider. The Parties agree to negotiate in

good faith for the next ninety (90) days a process that will facilitate transfer of serving ISP from one provider to another at the end-user customer's choice and minimize disruption of ISP service to the end-user customer. If the Parties cannot reach agreement on such a process within 90 days, they may agree to extend their negotiations for a period not to exceed an additional ninety days.

3.12 Membership in TISPA:

3.12.1 SBC shall become a member of TISPA for at least three years. The initial membership fee good for two years shall be \$110,000.00 for SBC and its ISP affiliate(s). SBC's third-year membership fee shall be the amount applicable to "national level" members.

IV.

TISPA Commitments

4.1 Regulatory Complaints:

4.1.1 TISPA agrees that upon execution of this Agreement, that it shall cease its pursuit of formal investigation of the TISPA Complaints by the TPUC, FCC, House Commerce committee and any other legislative, regulatory or governmental entity (including but not limited to requests to attorneys' general, the Federal Trade Commission, the U.S. Department of Justice, or other antitrust enforcement agencies). TISPA further agrees that it shall notify said entities that it wishes to withdraw such request for investigation and that no further need for such investigation exists. TISPA and each of its member companies shall not recommence any such pursuit unless and until a determination is made under the provisions of Section 5.3 below that SBC has materially breached the terms of this Agreement. TISPA retains any and all rights it may have to seek judicial or administrative enforcement of this agreement, including damages where applicable.

4.2 Press Release:

4.2.1 TISPA agrees, upon the execution of this Agreement, to participate with SBC in a joint press release, as mutually agreed to by the Parties, reflecting the resolution of this dispute and optimistic prospects of the Parties' relationship.

4.3 Membership Education:

4.3.1 TISPA agrees, to the extent information is provided to TISPA by SBC, to keep its membership informed and provide SBC the opportunity to meet with its membership to inform and instruct them regarding services available from SBC, the proper procedures for ordering services and following up on orders on behalf of customers, how to obtain additional information regarding SBC services, and how to utilize the procedures for addressing concerns and complaints, including the toll free complaint line and seeking intervention of the Ombudsman.

4.4 Incident Reports:

- 4.4.1 TISPA agrees to assist SBC in the investigation of incidents of allegedly inappropriate actions by SBC employees, by providing current, accurate information regarding such incidents, so that SBC can conduct an appropriate investigation and issue appropriate corrective measures.

4.5 Continued Negotiation:

- 4.5.1 The Parties agree to continue to negotiate in good faith regarding those matters which were raised by TISPA in its complaints to the TPUC and FCC but which were not addressed herein, and to work cooperatively in finding solutions to these issues.

4.6 Continued Cooperation:

This Agreement is intended to implement, not frustrate, federal and state law and regulatory policy. The Parties' intention is to establish and maintain policies and practices for greatly improved communication and cooperation to avoid disputes unrelated to the legitimate operation of the marketplace and to find areas where the Parties may legitimately work together to avoid conflict and advance the public interest in making telecommunications services available to Texas citizens. Nothing in this agreement shall require any Party to take any action that may expose such Party to liability to any other entity for actions taken pursuant to this Agreement.

V.

General Provisions

5.1 Jurisdiction:

- 5.1.1 The Parties agree that nothing contained herein should in any way be construed as an acknowledgment of Texas Public Utility Commission authority or jurisdiction over enhanced or information service pricing or any other matter raised and resolved hereby; nor has either Party waived any jurisdictional arguments it may have or have had regarding these matters.

5.2 Liability:

- 5.2.1 It is expressly understood and stipulated by the Parties, that this is a compromise agreement and not an admission of liability. SBC is entering into this Agreement to improve its relationships with ISPs and to avoid

further inconvenience and expense. SBC denies any liability and all allegations in the TISPA Complaints, including, but not limited to, claims, allegations and causes of action for breach of contract, breach of the duty of good faith and fair dealing, and antitrust violations, as well as any other allegations set forth in or implied by the TISPA Complaints. By executing this Agreement, TISPA does not concede that the DSL pricing herein constitutes just and reasonable rates for those services.

5.3 Dispute Resolution

5.3.1 In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is connected with or related in any way to this Agreement or any right, duty or obligation arising herefrom or the relationship of the Parties hereunder (a "Dispute or Controversy"), the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement as part of the cooperative endeavor described in Paragraph 3.2.3. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Section. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at such meeting or should no such meeting take place within such fifteen (15) day period, then either Party may by notice to the other Party submit the Dispute or Controversy for independent determination in accordance with Section 5.3.2 below.

5.3.2 Each Party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of Section 5.3.1 shall be submitted in good faith to non-binding confidential commercial mediation under the auspices of J.A.M.S./Endispute (or similar entity) for a period of at least sixty (60) days. Such mediation shall occur at a mutually convenient location. If mediation fails to resolve said dispute, the Parties shall be free to pursue any other legal or regulatory procedure they deem appropriate, subject to any and all jurisdictional challenges and other rights and defenses thereto; provided however, that disputes regarding prices to result from negotiations pursuant to Paragraphs 3.6, 3.10 and 3.11 (with all its subparagraphs) shall not be submitted to mediation. Notwithstanding this exception, the Parties retain all rights and remedies otherwise available to them by law with respect to such matters. Notwithstanding any statute or rules to the contrary, any Party that substantially prevails in a claim against the other Party is entitled to recover all costs of bringing the complaint (including attorneys fees, mediation fees and expert witness costs) from the other Party, whether such services are provided by in-house counsel or outside counsel.

5.4 General Provisions

5.4.1 Entire Agreement This Agreement constitutes the entire agreement between the Parties and shall not be modified, altered, or discharged except by a writing signed by each of the Parties to the Agreement.

5.4.2 Governing Law This Agreement is made and shall be enforced pursuant to the laws of Texas. Venue for any proceeding relating to the alleged breach of this Agreement shall be in Travis County, Texas.

5.4.3 Validity of Provisions The Parties agree that should any part of this Agreement be found to be void, that determination will not affect the remainder of the Agreement.

5.4.4 Use of Agreement The Parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the Parties allege a breach of this Agreement or as a complete defense to any lawsuit brought by either Party. Other than this exception, the Parties agree that they will not introduce this Agreement as evidence in any proceeding or in any lawsuit.

5.5 The Parties agree that this Agreement and all obligations imposed therein shall expire at midnight on June 12, 2003 unless extended or otherwise modified in duration by a writing signed by both Parties.

EXECUTED this _____ day of _____, 2000.

David Robertson, President, Texas Internet Service Providers' Association

David R. Lopez, President--Texas, SBC Operations, Inc.

Keith Epstein, Vice President and General Counsel-SBC Advanced Solutions, Inc.