

**Appendix A**  
**Proposed Modifications to Revised Settlement Agreement**

**REVISED RELEASE AND SETTLEMENT AGREEMENT**

This Revised Release and Settlement Agreement (the “Agreement” or “Settlement”) is entered into as of February 6, 2003, by and between SBC-Advanced Solutions, Inc., a Delaware corporation (“ASI”), Pacific Bell Telephone Company, a California corporation (hereafter referenced as “SBC California”), and the California ISP Association, a California non-profit corporation (“CISPA”), collectively (“the Parties”). This Agreement supercedes and replaces in all respects the Settlement Agreement previously entered into by CISPA, SBC –Advanced Solutions, Inc. and Pacific Bell Telephone Company entered as of August 12, 2002.

WHEREAS, ASI offers digital subscriber line transport services (“DSL Transport”) to ISPs in California, and SBC California provides joint marketing services for the DSL Internet access services from its internet affiliate in California, Pacific Bell Internet Services (hereafter referenced as “SBCIS”); and

WHEREAS, on or about July 25, 2001, CISPA filed a complaint (the “Complaint”) with the California Public Utilities Commission (the “Commission” or “CPUC”) against SBC California and ASI (the “Defendants”) alleging illegal discrimination in connection with DSL Transport services and alleging that ASI and SBC California are seeking to leverage their control over DSL infrastructure into a new monopoly in California with respect to the provision of broadband Internet access and delivery of Internet content; and

WHEREAS, ASI and SBC California deny the allegations in the Complaint; and

WHEREAS, the parties wish to resolve all remaining disputes without resorting to further litigation and to compromise and settle all disputes relating to conduct that was the basis of the claims made in the Complaint;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. ASI/SBC CALIFORNIA PRACTICES.
  - a. Broadband Capabilities Gateway (“BCG”).

ASI has no current plan to deploy BCG. BCG is defined as an architecture that would enable ASI to deliver multiple, simultaneous sessions over a single DSL line (defined as the line between the NID (“network interface device”) at an end user’s home/business and the DSLAM/RT (digital subscriber line access multiplexer/remote terminal)) as well as to deliver varying bandwidth and quality of service on demand to each session. ASI agrees it shall not,

without first obtaining the written consent of any affected ISP: (i) require migration from the single ATM PVC (“permanent virtual circuit”) per subscriber model and use of the current VP (“virtual path”) delivery method; (ii) implement multiple, simultaneous sessions and bandwidth or quality of service on demand capabilities on the ISP’s end user line; (iii) transmit data over the bandwidth on the DSL line subscribed to and paid for by the ISP; and (iv) use information which identifies an end user of the ISP in order to market competing services to that end user. **Refusal of an ISP to grant consent to any of these items will not be cause for termination of ASI’s DSL Transport service.** Nothing in this paragraph will be construed to entitle one ISP to grant or withhold authority affecting the services delivered to end users of any other ISP.

b. Grandfathering of Speeds.

In the event ASI elects to discontinue offering the Basic (384-1.5) and Premium (1.5-6.0) speed options (the “Two Speed Option”), ASI agrees, pursuant to this Agreement, to grandfather existing services using the Basic (384-1.5) and Premium (1.5-6.0) speed options and to set the price for the grandfathered Two Speed Option services as follows. The price offered for the Basic Speed shall not exceed the price for the 384-768 kbps speed, as it may change from time to time, and the price for the Premium Speed option shall not exceed the price for the 1.5-4.0 mbps speed, as it may change from time to time.

ASI will provide 60 days’ written notice prior to the expiration of a period of time when ISPs may add new customers that would be eligible for the grandfathered price.

The grandfathered status will apply only to end user accounts so long as no change requests are initiated by the ISP or the end user for such account. **This grandfathered status will not be lost if the ISP issues requests to: (i) move the end-user circuit to a new or upgraded ATM circuit of the ISP or due to transfer of end-user circuits to an ISP acquiring all or substantially all assets of the current ISP; (ii) to change an ATM VPI/VCI associated with the circuit; or (iii) other changes which do not affect the service offering selected for the end-user's circuit. This grandfathered status also will not be lost if the end-user makes changes to the underlying POTS service on the phone line at the existing location, including changing POTS service feature options, changes the phone number of the POTS line, or changes the billing name on the POTS account.**

2. MODEM.

Beginning in January, 2003, ASI reduced the cost to ISPs for modem kits to \$ 99. The modem kits include an Ethernet modem, power supply, an Ethernet cable, a data (phone) cable, a filter kit that includes 4 in-line filters, a desktop or laptop NIC (“network card”), an Installation CD and a Quick Start Guide. ASI commits that modem kits provided to customers of independent ISPs shall not include advertising, marketing or ordering materials associated with SBCIS or any other ISP.

3. BILLING.

ASI shall offer a one-time, \$500 stipend to each ISP that was a member of CISPA when the Complaint was filed and that had engaged in split billing as of June 1, 2001 to assist with costs associated with the conversion by such member to consolidated billing.

Within 30 days following the Effective Date of this Agreement, SBC California will create an Ombudsperson position to process and to reconcile unresolved ISP issues regarding billing inaccuracies and alleged improper sales practices. The Ombudsperson will report directly to the Sales Vice President-ISP Sales and have full authority to promptly resolve all issues received. The Sales Vice President-ISP Sales will review on a regular basis all Ombudsperson inquiries and the resolution status of each inquiry. Nothing in this paragraph shall be construed to relieve SBC California or ASI of their obligations to bill customers consistent with applicable California Public Utility law or orders of the Commission. Records of each inquiry and its resolution status of each inquiry shall be maintained by SBC California consistent with its obligations under the California Public Utilities Code and applicable orders of the Commission.

4. SYSTEMS.

ASI has employed system security enhancements that partition the view for ASOS/CPSOS (“Automated Surface Observing System”/“Complex Products Service Order System”) authorized users so that SBC California service representatives, acting on behalf of SBCIS are provided with SBCIS-only user IDs, so that such service representatives have an access view that only shows the SBCIS orders.

5. ORDERING INTERFACE.

ASI is in the process of implementing application to application interfaces utilizing Extensible Markup Language (XML). Currently, ASI provides an XML Application Programming Interface (API) that will allow the ISP to gain pre-order information on DSL Transport availability in addition to other methods currently available. Since October 2002, the Ordering XML API has been available for testing and certification by ISPs. The Disconnect XML API is targeted for availability for testing and certification by the last day of January 2003. The Status XML API is targeted for availability by the last day of April 2003. ASI commits to advising CISPA and the Commission of the status of these enhancements at the end of the second quarter of 2003. ASI commits that it will continue to waive DSL account set up charges for orders placed by an ISP via an electronic ordering interface.

6. SALES PRACTICES.

SBC California and ASI adhere to strict standards and practices regarding the protection of end user information. These standards are reiterated in SBC Communications Inc.'s policy on CPNI ("customer proprietary network information") compliance and Code of Conduct, as amended from time to time.

SBC California and ASI will continue to monitor and apply the appropriate level of discipline for Code of Conduct violations, up to and including dismissal.

ISPs will promptly provide examples of perceived breaches of the Code of Conduct (a copy of which has been provided to CISPAA) and inappropriate sales practices to the Ombudsperson's office.

SBC California and ASI will select an independent third party reasonably acceptable to CISPAA to review ASI and SBC California's process and procedures associated with access to and use of the ISP's information regarding end users; provided, however, that ASI and SBC California will not be required to permit monitoring or audit activities which conflict with their obligations under agreements with union-represented employees. ASI, SBC California and CISPAA will each receive statistical information from the third party regarding the results of such review. CISPAA, however, shall not be entitled to receive any individually-identifiable information about SBC California's or ASI's employees, agents, consultants or representatives from the third party. The results of the third party review shall be confidential. Nothing in this paragraph should be construed to prevent CISPAA, SBC California or ASI from responding to discovery propounded upon it by a third party or to otherwise prevent it from complying with a legal obligation to provide information to the CPUC or any third party pursuant to any compulsory legal process.

With respect to the third party review described above, the first step will be for CISPAA, SBC California and ASI to agree on a review process. After the agreed-upon process has been completed, if the third party review reveals that problems, if any, are de minimus, there will be no further third party reviews.

7. MIGRATION INTERVALS.

Currently ASI provides standard and consistent due date intervals totaling 10-12 business days for the process of placing disconnect orders and new connect orders to migrate an end user from one ISP to another ISP when both ISPs use ASI as the underlying DSL transport provider. This interval assumes the appropriate end user authorization or acknowledgement and coordination between the releasing ISP, the acquiring ISP and the ISP Service Center utilizing the stacked order process. This interval is the time associated with the order processing and provisioning of the DSL Transport service, and does not reflect the down time experienced by the end user, which should be less than the 10-12 business days, depending on the coordination between the ISPs, and the ability of the acquiring ISP to provision its service and any necessary CPE or software to the end user. ASI shall not be responsible for delays caused by inappropriate authorization or lack of cooperation from the involved ISPs.

ASI will use commercially reasonable efforts to provide the ISPs with the ability to reduce the down time experienced by an end user when migrating from one ISP to another, with a goal of minimizing the down time of the DSL Transport service. ASI commits to a target of no more than one business day of down time of the DSL Transport service for any central office-based end user seeking to migrate from one ISP to another ISP when both ISPs use the same ASI DSLAM, subject to the appropriate ISP authorization, cooperation and coordination. As an initial step in this direction, ASI entered into a trial with ISPs to develop processes and procedures which may yield an ISP migration with reduced downtime for the end user. The results of the trial allowed ASI to determine appropriate business requirements for mechanization. ASI represents that it is currently working on systems enhancements to enable an ISP to send a single "ISP Change Order" that would trigger disconnection of the DSL Transport service from the current ISP and connection of the DSL Transport service to the new (or "acquiring") ISP when the ISP has obtained the end user's authorization and has provided ASI with the appropriate ISP authorization.

With the ISP Change Order process, ASI expects to be able to offer, by the end of the Third Quarter of 2003, a standard interval of no more than one business day downtime of its DSL Transport service when the acquiring ISP asks for service in the same ASI DSLAM. For those instances in which the acquiring ISP asks for service in Remote Terminals, or in a different DSLAM in the same Central Office, ASI expects to be able to offer an average interval of no more than one business day downtime of the DSL Transport service in the Fourth Quarter of 2003. The one business day downtime interval for the DSL Transport service is targeted to begin and end on the same day. Such downtime interval targets do not include instances in which the end user is moving its location at the same time they are changing its ISP, or in which other changes to the DSL Transport service are being requested by the ISP. This end user downtime interval target is for the DSL Transport service only and does not include any time associated with the provisioning of service by the ISP and any necessary CPE or software to the end user. ASI commits to advising CISP and the Commission of the status of these enhancements at the end of the third quarter of 2003. With an ISP Change Order, the ISP will not be required to acquire additional Virtual Paths (VPs) to migrate an end user, so long as the ISP has an existing VP to a DSLAM with an available port within the same CO.

8. SETTLEMENT AGREEMENT; RELEASE OF CLAIMS.

a. Release of Claims and Covenant Not to Sue. Subject to the other provisions of this paragraph, the parties release any and all claims against each other that were the subject of the scope of issues as set forth in the May 10, 2002 Ruling Setting Scope and Schedule issued by the Assigned Commissioner and Assigned Administrative Law Judge in Case 01-07-027 before the CPUC (hereafter the "Scoping Memo"), and are alleged to have occurred between May 4, 2000 and August 12, 2002, without regard to the statutes or causes of action, including but not limited to release with prejudice of the Complaint. CISPAs shall not (i) advance in any other proceeding the same claims that it advanced in Case 01-07-027 before the CPUC as embodied in the Scoping Memo and allegedly occurring between May 4, 2000 and August 12, 2002, or (ii) otherwise use the facts that were the basis for the claims advanced in Case 01-07-027 before the CPUC as embodied in the Scoping Memo to advocate or publicize a position adverse to any SBC affiliate. This Settlement is expressly contingent on acknowledgement by the Commission that the Complaint proceeding has been terminated by approval of the Settlement as the means for resolving the allegations contained in this Complaint proceeding. The Parties agree to work expeditiously to prepare and to file a joint motion requesting approval of the Settlement pursuant to Rule 51 of the Commission's Rules of Practice and Procedure and applicable Commission Rulings. Each party shall use its best efforts to obtain such Commission approval. Each parties' substantive obligations under this Agreement shall become effective upon Commission approval of the Settlement.

In exchange for the consideration set forth in this Agreement and in accordance with the provisions set forth above, CISPAs and Defendants hereby waive, release and forever discharge the other of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, administrative proceedings, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, fixed or contingent (hereinafter called "Claims"), which any releasing party or their attorneys, employees, agents, affiliates, or successors may have by reason of any matter, cause, thing or Claims arising out of or based upon, any and all claims asserted in the Complaint as embodied in the Scoping Memo. These terms represent a full and final settlement of any and all claims arising out of any allegations or claims arising out of the Complaint as embodied in the Scoping Memo and alleged to have occurred between May 4, 2000 and August 12, 2002, and any claimed violation of law (including but not limited to local, state or federal), which relates to or arises from the facts or allegations in the Complaint as embodied in the Scoping Memo.

CISPAs and Defendants shall not prepare, file, institute, maintain, or prosecute any claim, lawsuit, complaint, administrative proceeding or other action or proceedings against the other arising out of or based upon, any and all facts that were the basis for the claims advanced in Case 01-07-027 before the California CPUC as embodied in the Scoping Memo and allegedly

occurring between May 4, 2000 and August 12, 2002, or any alleged violations of any local, state or federal law or regulation arising out of, based upon or relating to the claims advanced in Case 01-07-027 before the California CPUC as embodied in the Scoping Memo. Nothing in this paragraph should be construed to prevent CISPAs, SBC California or ASI from responding to discovery propounded upon it by a third party or to otherwise prevent it from complying with a legal obligation to provide information to the CPUC or any third party pursuant to any compulsory legal process. The parties further agree that the deletion of language from the Settlement Agreement filed in Case No. 01-07-027 on August 12, 2002 regarding the legal effect of this Settlement shall not be used or construed by one Party against the other Party.

The parties shall issue a joint press release within three (3) business days following the Effective Date of this Agreement. The content of any such press release shall be jointly agreed upon in advance.

b. Representations and Warranties

CISPA hereby represents and warrants (i) it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the state of California, and has all the authority to operate as a non-profit organization; (ii) the execution and delivery of this Settlement Agreement, and its performance hereunder, have been duly and validly authorized by all necessary corporate action of CISPA, and this Settlement Agreement constitutes a valid and binding obligation of CISPA enforceable in accordance with its terms; (iii) neither the execution and delivery hereof nor the performance by CISPA hereunder will (a) conflict with or result in a violation or breach or failure to follow or comply with the charter documents of CISPA including its bylaws or any membership agreements, or any other agreement, instrument or obligation to which CISPA is a party or by which CISPA may be bound or affected, or (b) result in the violation of any order, writ, injunction, decree, statute, rule or regulation applicable to CISPA; and (iv) no consent or approval by, or notification to or filing with, any third party is required in connection with the execution, delivery and performance of this agreement by CISPA.

9. EFFECTIVENESS OF THE AGREEMENT.

The Parties agree that this Agreement shall become effective only upon the Commission's approval of this settlement as the means for resolving the allegations contained in this Complaint proceeding. The effective date (the "Effective Date") shall be the date on which this Commission approves settlement as the means for resolving the allegations contained in this Complaint proceeding.

10. TERMINATION.

Either party may terminate this Agreement at any time on written notice to the other party upon the occurrence of a material breach by the other party, which breach is not cured within thirty (30) days following receipt of written notice specifying that a breach has occurred. In addition, either party may terminate this Agreement on thirty (30) days prior written notice in the event that there is an addition to or any changes to any law, statute or regulation relating to a

party's conduct under this Agreement, which addition or change renders a Party unable to perform its obligations under this Agreement or renders such performance impracticable or moot; such failure to perform is not a breach of this Agreement. In no event, however, will the Complaint be reinstated once the Settlement has become effective, the Complaint is terminated and CISPA has accepted any of the consideration offered by ASI and SBC California in this Agreement.

11. NO ADMISSION OF LIABILITY.

This Agreement shall not in any way be construed as an admission by any party of any wrongful acts against or any liability to any party, or any other person and each party specifically disclaims any unlawful or wrongful acts against or any liability to any party, or any other person, on the part of itself, its present and former partners, employees, officers, agents or other representatives.

12. PUBLICITY.

The parties agree that they will issue a joint press release within three (3) business days of the Effective Date regarding the settlement of the Complaint and that they will also agree on a prepared statement that will be used by the parties to respond to third party inquiries regarding the settlement of the Complaint. None of the parties will disparage, or otherwise engage in negative publicity, as to any of the other parties regarding matters that are the subject of the Settlement. Other than as set forth above, neither party shall identify, either expressly or by implication, the Agreement in any advertising, press releases, publicity or other promotional materials without the prior written consent of the other party, except as otherwise required by law after prior consultation with the non-disclosing party.

13. LIMITATIONS OF LIABILITY.

UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE, REGARDLESS OF THE CAUSE OF ACTION, FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING LOST PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED BY EITHER PARTY OR SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This Section 13 shall remain in effect indefinitely despite any termination or expiration of the Agreement.

14. MISCELLANEOUS.

a. No Assignment of Claims.

CISPA hereby represents and warrants that it has not heretofore assigned or transferred any claim, debt, liability, demand, obligation, cost, expense, damages, action or cause of action



released herein. CISPAs further agrees to indemnify and hold the Defendants, and each of them, harmless and defend the Defendants, and each of them, against any such claim, debt, liability, demand, obligation, cost, expense, damages, action or cause of action based on any such transfer or assignment or purported transfer or assignment.

b. Fees and Expenses.

(1) SBC California and ASI agree to pay collectively to CISPAs \$550,000 in consideration of costs incurred by CISPAs, including attorneys fees, legal costs and expenses in connection with this Complaint and this Agreement. CISPAs shall be solely responsible for actual payments to its respective attorneys or other vendors. Except as provided in the previous sentence, SBC California, ASI and CISPAs each agree to pay its own respective fees, costs and expenses and those of its agents and third party vendors, independent contractors or consultants, in connection with the Complaint and this Agreement, including without limitation its own legal, accounting and administrative expenses in connection with the negotiation of the Agreement or any related activities.

(2) SBC California and ASI agree collectively to establish through CISPAs a cooperative marketing fund in the amount of \$725,000 for the benefit of CISPAs's ISP members engaged in promoting ASI's DSL Transport with their ISP service (the "Fund"). The Fund will be created by the payment by Defendants collectively of three payments totaling \$725,000. The first payment, in the amount of \$362,500, will be made 30 days following the Effective Date of the Agreement, with one subsequent payment of \$181,250 sixty (60) days after the Effective Date and one subsequent payment of \$181,250 ninety (90) days after the Effective Date. CISPAs members may request and be reimbursed from the Fund for advertising, promotional activities and special events that have the specific purpose of promoting ASI's DSL Transport. CISPAs will determine all amounts to be paid to its members from the Fund pursuant to the guidelines set forth in the Agreement. In no event shall CISPAs authorize a payment from the Fund to a CISPAs member to defray SG&A ("selling, general and administrative") expenses or infrastructure costs necessary to provision ASI DSL Transport. CISPAs may be reimbursed in an amount up to 10% of the Fund, or \$72,500, for the costs of the Fund's administration, oversight and controls. CISPAs shall provide to SBC California and ASI a general accounting of disbursements from the Fund on a quarterly basis.

c. Amendment.

Modifications of and amendments to this Agreement must be in a writing that expressly refers to this Agreement and that is signed by an authorized representative of each party.

d. Severability.

If a court of competent jurisdiction holds that any provision of this Agreement is unenforceable, illegal, or void, such terms shall be enforced only to the extent it is otherwise enforceable or is not in violation of such law, and all other terms of this Agreement shall remain in full force and effect.

e. Headings.

The section headings and subheadings contained herein are for the purpose of convenience and are not intended to define or limit the contents of this Agreement.

f. Waiver.

No breach of any provision of this Agreement shall be deemed waived unless the waiver is in writing signed by a duly authorized representative of the waiving party. Waiver of any one breach shall not be deemed as a waiver of any other breach of the same or of any other provision of this Agreement.

g. Entire Agreement.

This Agreement represents the complete and exclusive statement of the entire Settlement between the parties and supersedes all prior and contemporaneous promises and agreements of any kind, as well as all negotiations and discussions between the parties hereto and/or their respective legal counsel. No other agreements, covenants, restrictions, representations, or warranties, express or implied, oral or written, have been made to any of the parties hereto.

h. Construction of Agreement.

Counsel for the respective parties have reviewed and participated in the drafting of this Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of any provision of this Agreement.

i. Authority to Execute Release.

Each person executing this Agreement on behalf of any party represents and warrants that he or she is fully authorized to execute this Agreement on behalf of such party, including the releases contained herein.

j. Survival.

The following provisions shall survive termination of this Agreement: Sections 8 and 11-13, 14 (e)-(n).

k. Recitals.

The recitals contained in this Agreement are made a part of the terms, provisions and conditions of this Agreement, and shall be fully binding on the parties as if fully set forth herein.

l. Succession.

This Agreement shall be binding upon and for the benefit of the parties hereto and everyone they have the power to bind, including, but not limited to their respective heirs, executors, administrators, successors and assigns.

m. Governing Law and Forum Selection.

The provisions of this Agreement shall be governed by California law. The parties agree to submit to the jurisdiction of California courts, located in San Francisco County, to resolve disputes concerning the Agreement; provided, however, that an action may be filed with the CPUC if the conduct at issue violates a provision of the California Public Utilities Code and is not otherwise a claim released pursuant to the Agreement and further provided, however, that nothing contained herein shall be deemed to expand or limit the original jurisdiction of the relevant authority. This Section 15(m) shall remain in effect indefinitely despite any termination or expiration of this Agreement.

n. Counterparts.

The parties hereto agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single document having the same force and effect as if all parties had signed the same counterpart.

The parties hereby accept and agree to the foregoing terms and conditions as of February \_\_\_\_, 2003.

**For ASI**

**For CISPA**

Name

\_\_\_\_\_

\_\_\_\_\_

Title

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Signature

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Date

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**For SBC California**

Name

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Title

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Signature

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Date

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