

ORIGINAL

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October 23, 2002

Via UPS Next Day Air

Hon. Dale Hardy Roberts  
Chief Administrative Law Judge  
Missouri Public Service Commission  
Governor Office Building  
Records Department  
P.O. Box 360  
200 Madison, Suite 100  
Jefferson City, MO 65102-0537

FILED<sup>3</sup>

OCT 24 2002

Missouri Public  
Service Commission

**Re: Request for Interconnection Agreement Approval  
Between Metrocall, Inc. and Southwestern Bell Telephone Co.**

Dear Judge Roberts:

Enclosed please find the original and five complete copies of an Application for Approval of an Interconnection Agreement between Metrocall, Inc. ("Metrocall") and Southwestern Bell Telephone Company ("SWB"). Attached to the original and each copy of the Application is an executive summary and a complete copy of the Agreement.

Also enclosed is an additional photocopy of the Application. Please date-stamp that photocopy and return it to this office in the enclosed self-addressed stamped envelope. Copies for the Office of Public Counsel and Office of General Counsel are also enclosed.

One Atlantic Center  
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Atlanta, GA 30309-3424  
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Hon. Dale Hardy Roberts  
October 23, 2002  
Page 2

Thank you very much for your assistance with this matter. If you require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Quirk, Jr.', with a stylized flourish at the end.

Ronald E. Quirk, Jr.  
Counsel to Metrocall, Inc.

Enclosures

cc: Mel Flowers, SBC (w/enc.)  
Office of General Counsel (w/enc.)  
Office of Public Counsel (w/enc.)

FILED<sup>3</sup>

OCT 24 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

APPLICATION OF METROCALL, INC. )  
FOR APPROVAL OF AN )  
INTERCONNECTION AGREEMENT WITH )  
SOUTHWESTERN BELL TELEPHONE )  
COMPANY PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996 )

DOCKET NO. \_\_\_\_\_

**APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT**

COMES NOW Metrocall, Inc. ("Applicant"), and files this Application for Approval of an Interconnection Agreement ("Agreement") between Applicant and Southwestern Bell Telephone Company ("SWB"), pursuant to Section 252(e) of the Communications Act of 1934, as amended by, inter alia, the Telecommunications Act of 1996 (the "Act"), and states as follows:

1. Applicant presents to this Commission for approval the Agreement attached hereto as Exhibit One, negotiated and executed pursuant to the terms of the Act.

All issues between the parties have been successfully negotiated and agreed upon.

Therefore, no arbitration of any issue is required.

2. Applicant's principal office is located at 6677 Richmond Highway, Alexandria, Virginia 22306. Applicant is a commercial mobile radio service ("CMRS") provider as defined in Section 332 of the Act, 47 C.F.R. § 332, licensed by the Federal Communications Commission ("FCC") to provide paging and messaging services throughout the United States.

3. The applicable standard of review is set forth in Section 252(e) of the Act, 47 U.S.C. § 252(e), which provides, in pertinent part, as follows:

(e) Approval By State Commission --

(1) Approval Required -- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for Rejection -- The State commission may only reject an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity . . . .

4. Applicant believes that the implementation of the Agreement complies fully with Section 252(e) of the Act because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. The Agreement promotes diversity in providers and will ultimately lead to increased customer choices for telecommunications services, including the paging services offered by Applicant.

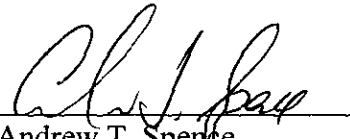
5. Applicant respectfully requests that the Commission grant approval of this Agreement without change, suspension, or other delay in its implementation. This is a bilateral agreement, reached as a result of negotiations and compromise between telecommunications carriers, and the parties believe that procedures for the review of the Agreement should be designed to permit expeditious implementation thereof, and that interventions should be strictly limited consistent with the scope of review specified by

the Act and this Commission's applicable rules.

**WHEREFORE**, Applicant respectfully requests that the Commission approve the Agreement between Applicant and SWB, and such additional relief as the Commission deems proper and reasonable.

Respectfully submitted,

**METROCALL, INC.**


By:   
Andrew T. Spence  
Counsel to Metrocall, Inc.  
MO Bar No. 53270

Alston & Bird LLP  
Bank of America Plaza  
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OATH

State of North Carolina)  
County of Mecklenburg)

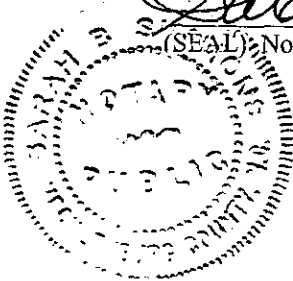
I, Andrew T. Spence, being duly sworn, authorized to do so as the attorney for the Applicant, Metrocall, Inc., and in such capacity qualified and authorized to verify and subscribe to the Application; do hereby declare and say that I have carefully examined the statements and matters contained in the Application; and that all such statements made and matters set forth therein are true and correct to the best of my knowledge, information and belief. I further affirm that the Application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

  
\_\_\_\_\_  
Andrew T. Spence  
MO Bar No. 53270

Subscribed and sworn to before me, a  
Notary Public in and for the State and  
County named above, this 22 day  
of October, 2002.

  
\_\_\_\_\_  
(SEAL) Notary Public

My Commission Expires May 6, 2003



## **EXECUTIVE SUMMARY**

The Parties to the Interconnection Agreement (the "Agreement") are Metrocall, Inc. and Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company ("SWB"). The Parties executed the Agreement on September 26, 2002 and October 17, 2002, respectively.

The purpose of the Agreement is to provide for the interconnection of each Party's networks and facilities for the purpose of providing paging services to residential and business end users. The Effective Date of the Agreement is to be the date the Commission approves the Agreement pursuant to Section 252(e) of the Telecommunications Act of 1996. The Initial Term of the Agreement is to commence on the Effective Date, and will continue until December 15, 2002. The Agreement shall thereafter continue in effect until terminated as provided in Section 44 therein.

**FILED<sup>3</sup>**

OCT 24 2002

Missouri Public  
Service Commission

**AGREEMENT FOR INTERCONNECTION**

**By, between and among**

**METROCALL, INC.**

**and**

**SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a  
SOUTHWESTERN BELL TELEPHONE COMPANY,**

**NEVADA BELL TELEPHONE COMPANY d/b/a SBC  
NEVADA BELL TELEPHONE COMPANY**



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## AGREEMENT FOR INTERCONNECTION

THIS AGREEMENT FOR INTERCONNECTION ("Agreement") is by, between and among Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company ("SWBT") and Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company ("Nevada Bell") (collectively "Telco") and Metrocall, Inc. (collectively "Carrier").

WHEREAS, Telco is a LEC authorized to provide Exchange Service and Exchange Access in all or portions of the States; and

WHEREAS, Carrier holds authority from the FCC to provide one-way paging and/or narrowband PCS in the States; and

WHEREAS, the Parties desire to enter into an agreement for the Interconnection of their respective networks, within those portions of the State in which both Parties are authorized to operate, and for the transport of traffic for the provision of Telecommunications Service pursuant to the Act and other applicable federal, state and local laws; and

WHEREAS, the Parties seek to accomplish Interconnection for their respective networks in a technically and economically efficient manner, and in accordance with the requirements of the Act and other applicable federal, state, and local laws;

WHEREAS, pursuant to Section 252(i) of the Federal Telecommunications Act of 1996, Metrocall, Inc. and Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company/Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company have entered into an agreement ("MFN Agreement"), portions of which are based upon the same terms and conditions contained in the Southwestern Bell Telephone Company and Nevada Bell/Verizon Wireless Messaging Services, LLC and Yuma Arizona RSA L.P. Agreement for the States of Kansas, Missouri, and Nevada ("the underlying Agreement.") and other portion(s) of which were voluntarily negotiated.

WHEREAS, in entering into this MFN Agreement, SWBT/Nevada Bell is not waiving any of its rights, remedies or arguments with respect to any legislative, regulatory or judicial actions or proceedings, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC*, 535 U.S. \_\_\_\_ (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, No. 00-101 (May 24, 2002); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) (rel. November 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000) in CC Docket 96-98; or the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68 (the "ISP Intercarrier Compensation Order") (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Rather, in entering into this MFN Agreement, SWBT/Nevada Bell fully reserves all of its rights, remedies and arguments. This reservation of rights includes but is not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the MFN Agreement must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this MFN Agreement. Notwithstanding anything to the contrary in this MFN Agreement, this reservation also includes, but is not limited to, SWBT/Nevada Bell right to exercise its option at any time in the future to adopt on a date specified by SWBT/Nevada Bell, the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions. It is SWBT/Nevada Bell's position that this MFN is subject to the change of law provisions permitted under the Federal Rules except to the extent otherwise expressly provided in the underlying Agreement and also is subject to any appeals involving the underlying Agreement. In the event that any of the rates, terms and/or conditions of the MFN Agreement, or any of the laws or regulations that were the basis for a provision of the MFN Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory bodies or

courts of competent jurisdiction, including but not limited to any finding that any of the UNEs and/or UNE combinations provided for under this MFN Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, it is SWBT/Nevada Bell's position and intent that the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party. In such event, it is SWBT/Nevada Bell's position and intent that the Parties immediately incorporate changes from the underlying Agreement, made as a result of any such action into this MFN Agreement. Where revised language is not immediately available, it is SWBT/Nevada Bell's position and intent that the Parties shall expend diligent efforts to incorporate the results of any such action into this MFN Agreement on an interim basis, but shall conform this MFN Agreement to the underlying Agreement, once such changes are filed with the Commission. Any disputes between the Parties concerning the interpretations of the actions required or the provisions affected shall be handled under the Dispute Resolution Procedures set forth in the MFN Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the Parties, intending to be legally bound, hereby agree as follows:

## **1. DEFINITIONS**

1.1 For purposes of this Agreement, including any and all exhibits, schedules, appendices and other attachments, the capitalized terms set forth herein shall be defined as set forth below. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement have the meaning set forth in the Act or, in the absence of their inclusion in the Act, their customary usage in the telecommunications industry as of the Effective Date of this Agreement.

1.2 "Accessible Letters" means notifications regarding Telco's products and services and operational matters, including, but not limited to, updates on products/services promotions, deployment of new products/services, modifications and price changes to existing products/services, cancellation or retirement of existing products/services, and operational issues.

1.3 "Act" means the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended, inter alia, by the Telecommunications Act of 1996, and as interpreted from time to time in the duly authorized rules, regulations, interpretations, rulings and orders of the FCC or the Commission and as further interpreted in any judicial review of such laws, rules, orders and regulations.

1.4 "Affiliate" means any person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the term "own" means to hold an equity or equivalent interest in, or hold a voting interest of, more than ten percent (10%). Person shall mean any individual, partnership, corporation, company, limited liability company, association, or any other legal entity authorized to transact business in any state in the United States.

1.5 "Ancillary Services" means services such as directory assistance, operator services, the provision of N11, 500, 700, 8YY, and 900 SAC, Switched Access Services, and 976 service. Enhanced 911 ("E911") is not an Ancillary Service.

1.6 "Ancillary Services Connection" means a one-way, Type 1 interface used solely for delivery of Carrier-to-Telco Ancillary Services traffic.

1.7 "Answer Supervision" means an off-hook supervisory signal of at least two (2) seconds in duration sent by Carrier to Telco's serving Central Office Switch on any Completed Call after address signaling has been completed, or an off-hook signal of at least two (2) seconds in duration sent by Telco to Carrier's MSC after address signaling has been completed.

1.8 "Applicable Laws" means all laws, statutes, common laws, regulations, ordinances, codes, rules, regulations, guidelines, orders, permits, and approvals, including, without limitation, those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement, and the Act.

1.9 "ASR" means the access service request and ordering form used by Telco.

1.10 "Authorized Services" means those one-way paging services and narrowband personal communications services (PCS) and services incidental or ancillary to such one-way paging and narrowband PCS services, which Carrier may lawfully provide under the Applicable Laws.

1.11 "Bellcore" means Telcordia Technologies, Inc., or any successor organization.

1.12 "Central Office Switch" means a switch, including, but not limited to an End Office Switch, a Tandem Switch, and/or a combination End Office/Tandem Switch.

1.13 "CMRS" means Commercial Mobile Radio Service as defined in 47 C.F.R. §20.3.

1.14 "Commission" means the applicable State agency with regulatory authority over Telecommunications in the State.

1.15 "CCS" means Common Channel Signaling, which is a method of digitally transmitting call set-up and network control data over a special network fully separate from the public switched network elements that carry the actual call. Signaling System 7 ("SS7") is the network protocol presently used by Telecommunications Carriers that utilize CCS.

1.16 "Completed Call" means a call which is delivered by a Party to the other Party for which Answer Supervision is returned.

1.17 "Conversation MOU" means the minutes of use that both Parties' networks are used for a Completed Call, measured from the time of receipt of Answer Supervision to the time of receipt of Disconnect Supervision.

1.18 "Customer" means the end user purchaser of Telecommunications Services from Telco or Carrier. As used herein, the term "Customer" does not include any of the Parties to this Agreement with respect to any Facility, Interconnection Trunk/Trunk Group, or other service obtained under this Agreement.

1.19 "Disconnect Supervision" means an on-hook supervisory signal sent at the completion of a Completed Call.

1.20 "Effective Date" means the date described in Section 23 (Effective Date) of this Agreement.

1.21 "End Office Switch" is a switch from which Telco's Customer's Exchange Services are directly connected and offered.

1.22 "Exchange Access" means Exchange Access as defined in the Act.

1.23 "Exchange Service" means Telephone Exchange Service as defined in the Act.

1.24 "Facility" means the wire, line, circuit, transmission system, facilities, conduit, fiber and/or cable used to transport traffic between the Parties' respective networks.

1.25 "FCC" means the Federal Communications Commission, or any successor federal agency which performs essentially the same functions as the Federal Communications Commission.

1.26 "Governmental Authority" means any federal, state, local, foreign, or international, court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.

1.27 "Interconnection" is as defined in the Act.

1.28 "Interconnection Arrangement" means the combination of POIs, Facilities and Interconnection Trunks/Trunk Groups used to originate or terminate traffic between the Parties' respective networks.

1.29 "Interconnection Trunk" or "Interconnection Trunks" or "Interconnection Trunk Groups" mean the switch port interfaces(s) used, and the communications path created, to connect Carrier's network with Telco's network for the purpose of exchanging Local Calls as provided herein.

1.30 "Internet Traffic" means, solely for the purposes of this Agreement and based upon the nature of Carrier's Authorized Services, traffic which is destined for, delivered to, or terminated on, the internet (as defined in 47 U.S.C. §203(e)(1)) or the world wide web.

1.31 "IXC" means Interexchange Carrier, which is a Telecommunications Carrier other than a CMRS provider or a LEC, that provides, directly or indirectly, interLATA and/or intraLATA Telecommunications Services for hire.

1.32 "LATA" means Local Access and Transport Area as defined in the Act.

1.33 "Local Calls" for the purposes of this Agreement are Authorized Services calls that originate on either Party's network and terminate on the network of the other Party and that, at the beginning of the call, originate and terminate within the same MTA.

1.34 "LEC" means a Local Exchange Carrier as defined in the Act.

1.35 "Local Service Area" is the geographic area within which Telecommunications Services are furnished by Telco between landline telephone stations without charge other than Telco's regular Exchange Service charge.

1.36 "LERG" means Local Exchange Routing Guide, a Bellcore reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.

1.37 "MSC" means the mobile switching center or paging office used by Carrier in performing, *inter alia*, call origination or termination functions to, or from, Carrier's Customers.

1.38 "MTA" means Major Trading Area as defined by 47 C.F.R. §24.202(a).

1.39 "NANP" means the North American Numbering Plan, the system of telephone numbering employed in the United States, Canada, and certain Caribbean countries.

1.40 "NPA" means the Numbering Plan Area and is sometimes referred to as an area code and the three digit indicator that is defined by the "A", "B" and "C" digits of a 10-digit telephone number within the NANP.

1.41 "NXX" means the three digit switch entity indicator that is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX contains 10,000 discrete numbers.

1.42 "Operator Services Switch" means a Central Office Switch designated by Telco to receive directory assistance and/or operator services traffic.

1.43 "Party" means either Telco or Carrier. "Parties" means both Telco and Carrier.

1.44 "POI" means a point of interconnection which is a physical demarcation point between the Parties' networks. The POI establishes the technical interface, the test point, and the agreed upon point for operational division of responsibility between Telco's network and Carrier's network with respect to a particular Interconnection Arrangement.

1.45 "Rate Center" means the specific geographic point and corresponding geographic area that have been identified by a LEC and, to the extent required by Applicable Laws, approved by the Commission, in a State. NPA-NXXs that have been assigned to a LEC for its provision of Exchange Services are associated with specific Rate Centers for the purpose of rating calls.

1.46 "Rating Point" means the vertical and horizontal ("V&H") coordinates assigned to a Rate Center and associated with a particular telephone number for rating purposes.

1.47 "Routing Point" means the V&H coordinates that a Telecommunications Carrier has designated as

the destination for inbound Telecommunications traffic that bears a certain NPA-NXX designation. The Routing Point need not be the same as the Rating Point. Central Office Switches are Routing Points for traffic to Customers identified by numbers drawn from NPA-NXX designations, as stated in the LERG. Where Carrier has not established Routing Points for its Dedicated NPA-NXXs in its own network, the Routing Point shall be the Telco Central Office Switch where Carrier's Interconnection Arrangements are interconnected.

1.48 "SAC Code" means Service Access Code, a non-geographic NPA typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas (e.g., 500, Toll Free Service NPAs (8YY), 700 and 900).

1.49 "State" means the state(s) individually for which the Parties intend to Interconnect under this Agreement, as listed on Appendix – State (Paging). Although this Agreement may apply to more than one state, it shall be applied separately as to each covered state, and tariff references, if any, shall be to Telco's tariffs that apply to operations in the particular state.

1.50 "Switched Access Services" means an offering of Exchange Access for the purpose of the origination or the termination of traffic from or to Exchange Service customers in a given area pursuant to a Switched Access Services tariff. Switched Access Services include: Feature Group A ("FGA"), Feature Group B ("FGB"), Feature Group D ("FGD"), Toll Free Service, and 900 access.

1.51 "Tandem Switch" means an access tandem switch that is used to connect and switch traffic between and among Central Office Switches and other Telecommunications Carriers' networks for the purpose of providing Exchange Service and Switched Access Services.

1.52 "Telecommunications" is as defined in the Act.

1.53 "Telecommunications Carrier" is as defined in the Act.

1.54 "Telecommunications Service" is as defined in the Act.

1.55 "Toll Free Service" means a Telecommunications Service provided with a dialing sequence that invokes toll-free, (i.e., 800-like) service processing. Toll Free Service includes calls to the Toll Free Service 8YY NPA SAC codes.

1.56 "Transit Traffic" means Telecommunications traffic between two parties, one of which is a Party to this Agreement and one of which is not, that is carried by the other Party to this Agreement while acting as an intermediary, that neither originates nor terminates on the other Party's network.

1.57 "Trunk Side" refers to a Central Office Switch interface that is capable of, and has been programmed to treat the Facility as, interfacing to another switching entity, for example, another Central Office Switch or an MSC. A Trunk Side interface offers those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

1.58 "Type 1" means a type of Interconnection Trunk interface (commonly referred to as a Trunk Side Message Trunk ("TSMT")) as technically defined in Bellcore Technical Reference GR-145-CORE and TA-NPL-000912 and as provided in accordance with this Agreement. The Trunk Side Message Trunk is a two or four wire trunk connection.

1.59 "Type 2A" means a type of Interconnection Trunk interface as technically defined in Bellcore Technical Reference GR-145-CORE and as provided in accordance with this Agreement.

1.60 "Type 2B" means a type of Interconnection Trunk interface as technically defined in Bellcore Technical Reference GR-145-CORE and as provided in accordance with this Agreement.

1.61 "Wire Center" denotes a building, or space within a building, which serves as an aggregation point on a given Telecommunications Carrier's network, where transmission facilities are connected and switched. Telco's Wire Center can also denote a building in which one or more Central Office Switches, used for the provision of Exchange Services and Switched Access Services, are located.

## 2. INTERCONNECTION METHODS

2.1 Interconnection Options. This Agreement provides for the physical connection of Carrier's and Telco's networks within each State for the transmission and routing of Telco-to-Carrier and Carrier-to-Telco Authorized Services traffic consistent with the requirements of 47 C.F.R. § 51.305 and Applicable Laws. Telco and Carrier will physically interconnect their respective networks and exchange traffic originating from their Customers, or terminating to the other Party's Customers, in connection with Carrier's Authorized Services in accordance with the terms set forth in this Agreement.

2.2 Authorized Services Interconnection. Authorized Services Interconnection shall be available at the trunk side of a Telco End Office Switch via Type 1 and Type 2B interfaces and at the trunk connection points for a Telco Tandem Switch via a Type 2A interface. Authorized Services Interconnection shall also be provided at other technically feasible points in Telco's network at the request of Carrier and subject to the negotiation of mutually acceptable provisioning and compensation arrangements. The Parties will attach or incorporate as amendments to this Agreement technical descriptions, and if required, descriptions of associated compensation arrangements, to cover any such additional Interconnection Arrangements.

2.2.1 Type 2A - Tandem Switch Interface. Carrier has and may establish additional Interconnection Trunk Groups at a Telco Tandem Switch using a Type 2A interface. Telco provided Interconnection Arrangements employing Type 2A Interconnection Trunk interfaces shall be as described in the definition and the referenced technical specifications. Except as may be otherwise provided in Section 2.2.5 (LATA-wide Trunk Side) hereof, Carrier-to-Telco traffic routed on such an Interconnection Trunk Group must be destined for an NPA-NXX residing in a Telco End Office Switch that homes on that Telco Tandem Switch. In the event that Telco deploys a new Tandem Switch (or substitutes a different Central Office Switch, e.g., a local tandem switch, as the tandem serving a particular rating area for new Facilities on a going forward basis) after the Effective Date, Telco will provide Carrier with reasonable advance notice of such a change and Telco will work cooperatively with Carrier to accomplish all necessary network changes. Telco-to-Carrier traffic will be routed on such an Interconnection Trunk Group only when such traffic is destined for a Carrier NPA-NXX(s) that homes on the Telco Tandem Switch at which the Interconnection Trunk Group is established. Carrier has and may obtain additional full NPA-NXXs from the national code administrator consistent with established industry guidelines for use with Interconnection Arrangements employing Type 2A interfaces. To the extent that Carrier is assigned a whole NPA-NXX, the administration of the NPA-NXX, once assigned, including updates to the LERG, will be the responsibility of Carrier. Each NPA-NXX associated with an Interconnection Trunk Group using a Type 2A interface must have a single Rating Point and that Rating Point must be associated with a Telco End Office Switch homing on the Telco Tandem Switch at which the Interconnection Trunk Group is established. The Rating Point does not have to be the same as the Routing Point. So long as Carrier does not participate in LRN-LNP number pooling, Carrier shall only utilize a full NPA-NXX consistent with established industry guidelines for use with Interconnection Arrangements employing Type 2A interfaces. Carrier, at its option, may choose a single Interconnection Arrangement within each LATA by employing a Type 2A interface to a Telco Tandem Switch within that LATA and establishing that Telco Tandem Switch as the homing tandem for its NPA-NXX(s) as described above. As a material part of the consideration for Carrier entering into this Agreement, Telco represents to Carrier that in the states of Texas, Kansas, Missouri, Nevada, and Connecticut, no CMRS Carrier is allowed to establish a Rating Point for a Carrier NPA-NXX at a Telco End Office Switch which does not home on the Telco Tandem Switch at which such CMRS Carrier's Interconnection Trunk Group is established.



2.2.2 Type 1.

2.2.2.1

Technical Specifications. Carrier may establish Interconnection Trunk Groups at Telco Central Office Switches to be used as part of a Type 1 Interconnection Arrangement. Telco provided Interconnection Arrangements employing Type 1 interfaces shall be as described in the definition and in the referenced technical specifications. The numbers associated with an Interconnection Trunk Group using a Type 1 interface must have the same Rating Point as the rest of the numbers in the same NPA-NXX.

2.2.2.2

Single POI. Carrier shall designate, to the extent technically feasible and commercially reasonable, only one POI for each Local Service Area from which Carrier desires to receive traffic through Type 1 interfaces, and shall designate, to the extent technically feasible and economically reasonable, only one End Office Switch per Local Service Area to be associated with that POI and from which to receive the Type 1 traffic. All of Carrier's telephone numbers in a Local Service Area shall reside within the End Office Switch (es) associated with the POI. For the purposes of this Agreement, the Parties agree that it is technically feasible and commercially reasonable for Carrier to designate additional POIs and End Office Switches in a Local Service Area in at least the following circumstances: (i) the End Office Switches where Carrier has Interconnection at that time have insufficient numbers to meet the reasonably foreseeable needs of Carrier; (ii) Carrier has a need to designate and obtain Type 1 interfaces from an additional End Office Switch within a particular Local Service Area primarily for the purpose of serving a different Local Service Area associated with the additional End Office Switch, (iii) the End Office Switches where Carrier has Interconnection at that time have insufficient capacity to meet the immediate needs of Carrier, (iv) there are, at the time of the request, insufficient Circuits between the End Office Switches where Carrier has Interconnection and Carrier's MSC to deliver the reasonably foreseeable traffic, and/or (v) there has been a geographic NPA split and the Local Calling Area associated with the End Office Switches where Carrier has Interconnection at that time has been split and Carrier designates an additional POI and/or End Office Switch in the same Local Calling Area, but a different NPA. Notwithstanding anything in this Agreement to the contrary, (i) all of Carrier's POIs and designated End Office Switches associated with such POIs as of the Effective Date, and (ii) all of Carrier's new POIs and designated End Office Switches, once designated and accepted as technically feasible and commercially reasonable by Telco, shall be deemed technically feasible and commercially reasonable for the entire term of this Agreement (i.e., as long as this Agreement remains effective) and may remain regardless of whether the Local Service Area changes.

2.2.2.3

Migration. The Parties agree that Interconnection Arrangements employing Type 1 interfaces are not optimal for efficient transport of Telco-to-Carrier traffic due to the routing restrictions imposed by the line treatment of the trunk. The Parties therefore agree as follows:

- a. Carrier shall identify all existing full NPA-NXXs assigned to it which are established as Type 1 NPA-NXXs and shall convert those

NPA-NXXs so they home on Tandem Switches within twelve (12) months of the Effective Date of this Agreement. After receiving a written request from Carrier to convert full Type 1 NPA-NXXs, and in cooperation with Carrier, Telco will assist Carrier in achieving the transition of those numbers by: (i) performing switch programming necessary to convert Carrier's NPA-NXXs from Type 1 to Type 2A NPA-NXXs; (ii) re-trunking Type 1 Telco-to-Carrier from the Telco End Office Switch to the appropriate Telco Tandem Switch for delivery to Carrier's POI; (iii) designating as Type 2 traffic the traffic which is currently designated as Type 1 and routing that traffic to the appropriate Carrier trunk groups (whether existing or new) as further defined under an implementation plan; (iv) rating Carrier's Type 1 NPA-NXXs at the Telco End Office Switches where the Type 1 NPA-NXXs are currently rated; and (v) routing Type 1 Telco-to-Carrier traffic to a Telco Tandem Switch that the current End Office Switch subtends.

b. Carrier will take reasonable steps to avoid increasing the use of Interconnection Arrangements employing a Type 1 interfaces whenever economically and technically feasible (e.g., when full NXXs are available to Carrier in sufficient quantities to allow Carrier to implement its business plan at a cost that is economically reasonable). Carrier also agrees that, if new technology is developed to allow for routing of calls to DID number blocks over switched shared transport Interconnection Trunks for common delivery over Interconnection Arrangements employing Type 2A interfaces, Carrier will work with Telco to analyze what changes may be appropriate to their existing Interconnection Arrangements. In the event that the Parties agree that such new technology will result in more efficient Interconnection for both Parties, Carrier will obtain the necessary delivery point nomenclature and routing numbers and will utilize this technology in lieu of current Interconnection Arrangements employing Type 1 interfaces. Telco agrees not to impose database query charges on Carrier for use of any alternate routing technology to replace dedicated Interconnection Arrangements employing Type 1 interfaces in place at the time such alternate routing technology becomes generally available through Telco.

c. Telco will waive all nonrecurring charges otherwise applicable to Carrier for moving or converting existing Type 1 Interconnection Trunks or full Type 1 NPA-NXXs to Interconnection Trunks using such alternative routing technology or Type 2A interfaces.

2.2.2.4 Type 1 Dial Line. Type 1 Dial Line will not be used for Interconnection. Any Interconnection Arrangements employing Type 1 Dial Line will be terminated within ninety (90) days of the Effective Date of this Agreement; provided, however, that such conversion shall merely be in Telco's billing system and it shall have no economic effect on Carrier.

2.2.3 Type 2B – End Office Switch Connection. Carrier may establish Interconnection Trunk Groups at a Telco End Office using a Type 2B interface. Telco provided Interconnection Arrangements employing Type 2B interfaces shall be as described in the definition and the referenced technical specifications. Carrier-to-Telco traffic routed on such an Interconnection Trunk Group must be destined for an NPA-NXX residing in that Telco

End Office Switch. Telco-to-Carrier traffic may not be routed on an Interconnection Trunk Group employing a Type 2B interface.

2.2.4 Authorized Services Interconnection POI Options. There will be a single POI for each Interconnection Arrangement used to exchange Local Calls; provided, however, that for Interconnection Arrangements that handle both Telco-to-Carrier and Carrier-to-Telco traffic, there may be two POIs. This Agreement establishes the responsibilities of each Party on each side of the POIs, the Interconnection Arrangements to be established between the Parties' networks, and the appropriate compensation arrangements for exchange of Local Calls over those Interconnection Arrangements. Carrier and Telco shall cooperate in good faith to mutually agree on a POI for each Facility utilized to carry traffic between their respective networks. A POI may be located at:

- a. the Telco Wire Center where the Facilities terminate for Carrier-to-Telco Authorized Services traffic,
- b. Carrier's MSC, or Carrier's assigned point of presence, where the Facilities terminate for Telco-to-Carrier Authorized Services traffic, or
- c. another mutually agreeable location.

2.2.5 LATA-wide Trunk Side. This is a non-standard (non-LERG) additional routing service for Carrier-to-Telco traffic. Where requested, and subject to mutually agreed upon terms, an Interconnection Trunk Group may be established as part of an Interconnection Arrangement between Carrier and Telco at a Telco Tandem Switch in a LATA, using Type 2A interfaces for termination of all Authorized Services Local Calls destined for any publicly dialable NPA-NXX Codes in that LATA; provided, however, that such LATA-wide Trunk Side routing shall only be available in those states where, and on the same terms and conditions, including price, as, Telco provides such LATA-wide Trunk Side routing to any other CMRS provider. In the event that Telco has designated a Tandem Switch or Tandem Switches to which all Authorized Services Local Calls destined for any publicly dialable NPA-NXX Codes in that LATA must be routed ("LATA-wide Tandem Switch") and Telco designates a new LATA-wide Tandem Switch to which some of Carrier's Authorized Services Local Calls for LATA-wide Trunk Side routing must be directed after the Effective Date hereof, Telco shall (a) provide Carrier with reasonable advance written notice of such a change and Telco will work cooperatively with Carrier to accomplish any necessary network changes and (b) waive all nonrecurring charges otherwise applicable to Carrier for moving existing trunks from the LATA-wide Tandem Switch at which Carrier received LATA-wide Trunk Side routing to the new LATA-wide Tandem Switch for such orders that are completed within ninety (90) days of the final cut-over of the new Tandem Switch. Telco may discontinue LATA-wide Trunk Side routing service to Carrier in a State on at least twelve (12) months prior written notice if Telco ceases to provide such LATA-wide Trunk Side routing service to all CMRS carriers on the same date.

2.2.6 Interface Combinations. Carrier may designate the Authorized Services Interconnection interface it wants to receive from the following combinations: Trunk Side terminations at voice grade, DS0, DS1, or higher than DS1 for Type 1 and 2B, and Trunk Side at DS1 or higher for Type 2A. For Telco-to-Carrier Authorized Services traffic, Telco shall provide the Interconnection Arrangements from the designated End Office Switch or Tandem Switch to the POI associated with it. For Carrier-to-Telco Authorized Services traffic, Carrier shall provide the Interconnection Arrangements from its MSC to the POI associated with it. Only one Authorized Services Interconnection Trunk Group will be provided in connection with each such Interconnection Arrangements.

### 3. SIGNALING.

3.1 Signaling Protocol. The Parties will connect their networks using CCS or multi-frequency ("MF") or ("DTMF") signaling. If CCS signaling services are provided by Telco, Telco shall provide such CCS signaling services to Carrier upon written request on terms and conditions, including price, at least as favorable to Carrier as Telco provides CCS signaling services to any other CMRS Carrier in the State. Where MF signaling is used, the Parties agree, below, to Interconnect their networks using MF or DTMF signaling, subject to availability at the End Office Switch or Tandem Switch at which Interconnection occurs. The Parties acknowledge that the use of MF signaling may not be optimal. Telco will not be responsible for correcting any undesirable characteristics, service problems or performance problems that are directly attributable to MF-to-CCS interworkability or the signaling protocol required for Interconnection with Carrier employing MF signaling.

3.2 CCS Message Exchange. When CCS signaling is utilized by the Parties for Interconnection hereunder, the Parties directly or, where applicable, through their third-party provider, will cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its Customers. All CCS signaling parameters will be provided to the other Party, including, without limitation, calling party number ("CPN"), originating line information ("OLI"), calling party category and charge number.

3.3 ANI Delivery. If Telco passes automatic number identification ("ANI") to any other CMRS carrier using MF or DTMF signaling, then Telco shall make such arrangement available to Carrier on the same terms and conditions, including price, as it provides such arrangement to the other CMRS carrier.

### 4. NUMBERING

4.1 Routing of Carrier-to-Telco Traffic. Unless Carrier is receiving LATA-wide Trunk Side routing services, all terminating traffic delivered by Carrier to a Tandem Switch destined for publicly dialable NPA-NXXs that do not home on that Tandem Switch is misrouted. Telco shall provide notice to Carrier that such misrouting has occurred. In the notice, Carrier shall be given sixty (60) days to cure such misrouting. In the event that Carrier does not cure the problem within such sixty (60) day period, Telco shall bill and Carrier will pay, in addition to any other normal usage charges, a misroute surcharge per call that is equal to the rate for End Office Switch Termination (Type 2B rate) in Appendix - Pricing (Paging) from that point forward until the misrouting is corrected.

4.2 Routing Instructions. The Parties will exchange all Local Calls between their networks using only Interconnection Arrangements provided under this Agreement. Further, the Parties shall deliver all traffic destined for the other Party's network in accordance with the serving arrangements defined in the LERG, except when Carrier uses the LATA-Wide Trunk Side routing services described in Section 2.2.5 (LATA-wide Trunk Side) above, or when Carrier's MSC serves NPA-NXXs, some of which home on a Telco Tandem Switch, and some of which home on a non-Telco Tandem Switch. In this case all traffic from the Telco Tandem Switch may be delivered over a direct Interconnection Arrangement to the Carrier MSC regardless of dialed NPA-NXX.

4.3 Transit Traffic. It is the separate responsibility of each Party to negotiate Interconnection, traffic transport and termination arrangements, and compensation arrangements, directly with other Telecommunications Carriers with whom they exchange traffic. Telco will deliver all traffic destined to Carrier regardless of the Telecommunications Carrier originating such traffic; other than delivering such traffic, Telco has no responsibility for traffic originated by another Telecommunications Carrier and routed to Telco's Tandem Switch destined for Carrier's MSC.

4.4 Compliance with Industry Guidelines. Each Party generally will follow the Industry Carriers Compatibility Forum ("ICCF") Central Office Code Guidelines, or modifications that may be made to those Guidelines by the Network Interconnection/Interoperability Forum ("NI/IF"); provided, however, that as material consideration for Carrier entering into this Agreement, Telco represents that it has, and

agrees that it will during the term hereof, apply the ICCF Central Office Guidelines in a nondiscriminatory fashion between Carrier and all other CMRS carriers in the State.

**4.5 Programming of Switches.** Each Party shall, at all times, program and update its own switches, MSCs and network systems to recognize and route traffic to the other Party's assigned NPA-NXXs. Neither Party shall charge the other Party for changes to switch routing software necessitated by the opening of NPAs or NPA-NXXs. If either Party is authorized to recover its costs for changes to switch routing software necessitated by the opening of NPAs or NPA-NXXs, the Parties shall reimburse each other's costs according to such authorization.

**4.6 RDS Input.** The Parties will each be responsible for the electronic input of their respective number assignment information into the Routing Database System. The Parties shall comply with Central Office Code Assignment Guidelines, as currently specified in INC 95-0407-008, in performing the electronic input of their respective number assignment information into the Routing Database System. The Parties shall cooperate to reassign the routing V&H and the Common Language Location Identifier ("CLLI") of Dedicated NPA-NXXs from Telco's Tandem Switches to points within Carrier's network as designated by Carrier. Carrier agrees that it shall use reasonable efforts to complete the reassignment of its Dedicated NPA-NXXs into its network. The Parties agree to complete the transfer of all codes by March 15, 2002. Until an NPA-NXX is reassigned, it will continue to be assigned to Telco's network as shown in the LERG.

**4.7 Addition of NXXs.** Telco will forward a confirmation to Carrier in response to Carrier's request to add Carrier's NPA-NXXs to Interconnection Trunk Groups, when Carrier submits such a request accompanied by an ASR without service and using the remarks section to refer to the NPA-NXX form. This NPA-NXX installation request will be treated as a no-charge order.

**4.8 Switch Translations.** Both Parties will provide switch translations and billing contact points regarding the establishment of or modification to full NPA-NXXs.

**4.9 Dialing Parity.** Telco agrees that the same local dialing parity available to telephone exchange service providers under the Act will be available to Carrier.

## **5. INTERCONNECTION ARRANGEMENTS**

**5.1 Responsibility for Interconnection Arrangements.** Unless otherwise agreed herein, Carrier and Telco will Interconnect directly in each LATA in which they exchange Local Calls and Switched Access Services traffic.

**5.1.1 Facilities.** Each Party shall be responsible for designing, engineering, initiating the process of provisioning and/or provisioning its own or leased transport Facilities to route calls originating on its network to, and transporting calls originating on the other Party's network from, the POI. Each Party may construct its own Facilities, it may purchase or lease these Facilities from a third party, or it may purchase or lease these Facilities from the other Party (if available) pursuant to tariff or separate contract; provided, however, that Telco shall have no general obligation to pay for Facilities obtained by Carrier from third parties; provided, further, that as material consideration for Carrier entering into this Agreement, Telco represents as of the Effective Date hereof that Telco does not pay any CMRS carrier for Facilities used to deliver Telco-to-Carrier traffic obtained by CMRS carriers from third parties or other Telecommunications Carriers in the State. If Carrier leases Facilities from Telco to carry calls to or from the POI, Carrier shall purchase and be credited for outages of such Facilities pursuant to the Special Access Section of Telco's applicable Access Service tariff; provided, that, as a material consideration for Carrier entering into this Agreement, Telco represents that as of the Effective Date hereof, Telco only provides Facilities used to deliver Telco-to-Carrier traffic to CMRS carriers on the terms, conditions, and rates set forth in the Special Access Section of Telco's applicable Access Service tariff. If Telco begins providing, or allowing any other CMRS Carriers in

the State to establish, interconnectivity between its network and the network of any other CMRS Carrier using unbundled network elements, then Telco will make the same interconnectivity available to Carrier in the State on the same terms and conditions, including price. The Parties will connect their networks using digital or analog Facilities. Each Party will select the Facilities to be used to deliver and receive traffic at the POI, after due consultation with the other Party. Each Party agrees that it will not impose dedicated transport compensation obligations on the other Party for Interconnection Arrangements that will cause the other Party's network design and resulting Interconnection Arrangements to become less than an efficient network solution. Prior to Carrier delivering to Telco any Carrier-to-Telco Authorized Services traffic, Carrier will notify Telco pursuant to Section 36 hereof that it will begin delivering such traffic. If the Parties agree to use the same Facilities that are dedicated to the transport of Authorized Services traffic between their respective networks for Telco-to-Carrier and Carrier-to-Telco traffic, the Parties shall compensate each other as provided in Section 12.5 (Compensation for Interconnection Arrangements) hereof. Subject to Section 5.2.3 (Discontinuance of Shared Facilities) hereof, each Party reserves the right to discontinue the use of all, or a portion, of the such Facilities dedicated to the transport of Authorized Services traffic between their respective networks and instead to use Facilities provided by it for the transport of traffic originating on its network for termination on the other Party's network.

- 5.1.2 Trunk Arrangements. Carrier will be responsible for designing, engineering, and ordering all Authorized Services Interconnection Trunks. Carrier will select the type and size for Interconnection Arrangements according to sound engineering practice and Section 5.4 (Interconnection Arrangements Design Blocking Criteria), as mutually agreed to by the Parties pursuant to good faith negotiations. Telco shall be responsible for providing the Interconnection Trunks for Telco-to-Carrier traffic, and Carrier shall be responsible for providing the Authorized Services Interconnection Trunks for Carrier-to-Telco traffic; provided, however, that the Party delivering Interconnection traffic ("Originating Party") may provide Interconnection Arrangements for delivery of its Interconnection traffic to the other Party ("Receiving Party"). Alternatively, the Originating Party may use Interconnection Arrangements provided by the Receiving Party.
- 5.1.3 Existing Interconnection Arrangements. Carrier and Telco presently are interconnected at numerous points in each LATA throughout Telco's Service Area. Each Party has provided the other Party with Interconnection at various reasonable and technically feasible points on its network in each LATA or Tandem Switch serving area. Carrier has provided to Telco information describing its network Facility types (all of which are employed to carry Telco-to-Carrier traffic), lengths and configuration ("Network Information"). Having reviewed Carrier's Network Information, the Facility mile average for each State in which Carrier Interconnects with Telco has been found to fall below the following for Facilities employing Type 1, Type 2B and Type 2A interfaces: (a) Connecticut – 30 miles; (b) Kansas – 10 miles; (c) Missouri – 10 miles; (d) Nevada – 20 miles; and (e) Texas – 15 miles (individually the "State Facility Mile Average"). If the Parties should elect to enter into Interconnection Arrangements in a State other than those listed in the preceding sentence, the Parties shall negotiate in good faith and mutually agree on a Facilities mile average for such State that, taken as a whole and on balance considering the time of construction, represents an efficient network solution. No later than sixty (60) days after the date this Agreement is duly executed by both Parties, Carrier will provide Telco with updated Network Information ("Updated Network Information") for each State in which Carrier has Interconnection Arrangements with Telco. If the Facility mile average in a State in which Carrier has Interconnection Arrangements with Telco remains at or below the State Facility Mile Average for such State set forth above,

the Parties agree that their present network design and resulting Interconnection Arrangements, taken as a whole and on balance, represent an efficient network solution taking into consideration the time of construction, and subject further to changes agreed to in this Agreement. If the Updated Network Information is not supplied for a State in which Carrier has Interconnection Arrangements with Telco within sixty (60) days after the date this Agreement is duly executed by both Parties, or such Updated Network Information reveals that the Facility mile average for such State in which Carrier has Interconnection Arrangements with Telco exceeds the State Facility Mile Average for such State set forth above, then Carrier will pay for that portion of the cost of each Facility representing the portion of the length in excess of the shorter of the State Facility Mile Average or the distance from Telco's Central Office where the Facility connects to the LATA boundary (if the Facility crosses the LATA boundary).

- 5.1.4 Design Criteria. The Parties agree that (i) reliable and economically efficient Interconnection requires, among other things, that Interconnection points between the Parties' networks be within reasonable proximity to each other and (ii) significant rule changes and price changes that directly affect the cost of the network and its operation have taken effect since the construction of most of the current network. These rule and cost changes may indicate that some reconfiguration may be necessary from current arrangements to provide for optimal efficiency. Based on the joint planning and forecasting requirements, the Parties agree that, in order to keep transport costs balanced for the exchange of Local Traffic, routing flexibility must be maintained which will allow the use of less costly shared or common transport within each Party's network to permit the use of the shortest available dedicated Facility between the Parties' networks for traffic exchange, consistent with LERG routing guidelines.

## 5.2 Installation/Provisioning of Trunks.

- 5.2.1 Due Dates. Due dates for the installation or conversion of Interconnection Arrangements covered by this Agreement shall be non-discriminatorily based on Telco's standard intervals or mutual agreement of the Parties in accordance with the availability of Facilities and equipment. In no event shall Telco provide installation and maintenance intervals that are less favorable to Carrier than the installation and maintenance intervals for like type services which it provides to itself, its subsidiaries, its Affiliates, or other Telecommunications Carriers. Telco will contact the Carrier installation contact on Interconnection Arrangements orders no later than the plant test date to begin performing installation work.
- 5.2.2 Major Projects. Multiple orders that comprise a major project that directly impact the other Party may be submitted at the same time, and then implementation will be jointly planned and coordinated. Major projects are those that require the coordination and execution of multiple orders, or related activities between and among Telco and Carrier work groups, including, but not limited to, the initial establishment of Interconnection Arrangements and service in an area, designated NPA-NXX relocations, re-homes, Facility grooming or major network rearrangements.
- 5.2.3 Discontinuance of Shared Facilities. Each Party reserves the right to discontinue the use of all, or a portion, of the Facilities provided by the other Party for delivery of such Party's own traffic to the other Party. This provision does not negate any obligations either Party may have regarding such Facilities, such as, but not limited to, previously agreed upon term and notice provisions.

## 5.3 Trunk Servicing.

- 5.3.1 Capacity Management. The Parties will jointly manage the capacity of Interconnection Trunk Groups. Telco will send a request to Carrier to trigger changes Telco desires to the

Interconnection Trunk Groups based on Telco's capacity assessment. To begin the provisioning process, Carrier will issue an ASR to Telco's Wireless Interconnection Service Center:

- 5.3.1.1 Within ten (10) business days after receipt of the request, upon review of and in response to Telco's request; or
- 5.3.1.2 At any time as a result of Carrier's own capacity management assessment.
- 5.3.2 Engineering Responsibility. Carrier will be responsible for engineering and maintaining the Interconnection Arrangements from the POI to Carrier's network. Telco will be responsible for engineering and maintaining the Interconnection Arrangements from Telco's network to the POI.
- 5.3.3 Service Credits. When Carrier incurs separate charges for Interconnection Arrangements, Carrier shall, upon request, be credited an amount for the period during which Interconnection Arrangements are out of service in accordance with Telco's applicable Access Services Tariff, but in no event shall such credit exceed the amount actually paid, if any, for such Interconnection Arrangement by Carrier.

#### 5.4 Interconnection Arrangements Design Blocking Criteria.

- 5.4.1 B.01 Standard. Forecasting and servicing for Interconnection Arrangements shall be based on the industry standard objective of B.01 (two percent (2%) overall time consistent average busy season busy hour loads (one percent (1%) from the End Office Switch or Carrier MSC to the Tandem Switch, and one percent (1%) from the Tandem Switch to the End Office Switch or Carrier MSC), based on the engineering document referred to as Neil Wilkinson B.01M [Medium Day-to-Day Variation]), but in all cases Interconnection Arrangements shall be provided at a level of quality at least equal to that which such Party provides to itself, a subsidiary, an Affiliate, or any other Telecommunications Carrier.
- 5.4.2 Measurement. When Interconnection Arrangements exceed measured blocking thresholds on an average time consistent busy hour for a twenty (20) business day study period, the Parties shall cooperate to modify the Interconnection Arrangements to meet the foregoing blocking standard as soon as practicable. The Parties agree that twenty (20) days is the study period duration objective.
- 5.4.3 Direct Trunking of Carrier to Telco Traffic. If Carrier-to-Telco traffic from Carrier's network to any Telco Tandem Switch destined for any Telco End Office Switch or third party End Office Switch at any time exceeds 500 busy hour centum call seconds (ccs) (the practical engineering capacity of a DS1), the Parties shall, within thirty (30) calendar days of the occurrence, meet to review available traffic studies, trunk group architecture and traffic routing relating to this Carrier-to-Telco traffic. Both Parties shall explore options for Carrier to reduce Tandem Switch traffic that is terminated to a particular Telco End Office Switch to less than 500 busy hour ccs. If the Parties are unable to agree upon a solution reasonably acceptable to Telco within thirty (30) calendar days of the meeting, Carrier shall at its expense, within sixty (60) days after the thirty (30) day period expires establish new or augment existing Interconnection Trunk Groups from Carrier's network to the applicable Telco End Office Switch.
- 5.4.4 Resizing of Trunks. If an Interconnection Trunk Group is under seventy-five percent (75%) of ccs capacity during the busy hour on a monthly average basis for each month of any consecutive six (6) month period, either Party may contact the other Party to discuss resizing the Interconnection Trunk Group. Neither Party will unreasonably refuse a request to resize such Interconnection Trunk Group.



5.4.5 Contact Point. Each Party shall provide the other with a specific point of contact for planning, forecasting, and trunk servicing purposes.

5.4.6 Trouble Reporting. Carrier and Telco shall:

- a. Provide trained personnel with adequate and compatible test equipment to work with each other's technicians;
- b. Notify each other when there is any change affecting service, including the due date;
- c. Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure the Interconnection Trunks/Trunk Groups and Facilities are installed and comply with acceptance test requirements and are placed in service in a timely fashion and by the due date;
- d. Perform sectionalization to determine if a trouble is located in its Facilities or Interconnection Trunks prior to referring the trouble to each other;
- e. Provide each other with a trouble reporting number that is readily accessible and available 24 hours/7 days a week;
- f. Carrier shall provide Telco test line numbers and access to test lines, including a test line number that returns Answer Supervision in each of Carrier's Designated NPA-NXXs; and
- g. Notify the other Party and obtain the other Party's consent (except in the case of an emergency that threatens the integrity of the network) prior to removing Interconnection Trunks or Facilities from service.

The Parties will cooperatively plan and implement coordinated repair procedures for the Interconnection Arrangements to ensure trouble reports are resolved in a timely and appropriate manner. Each Party will provide the other Party a 24 hours a day, seven days a week, network management contact and a network contact to whom to report trouble associated with the Parties' Interconnection Arrangements.

## 6. TRUNK FORECASTING.

6.1 Forecasts. To permit orderly growth and network management, Carrier shall forecast the volume of traffic of each Interconnection Arrangement associated with each POI. Carrier's forecast information must be provided to Telco upon written request, as often as twice a year. If Telco measures and/or forecasts the volume of Telco-to-Carrier or Carrier-to-Telco traffic of the Interconnection Arrangements associated with each POI, then Telco shall provide such measurements and/or forecasts to Carrier upon written request, as often as twice a year; provided, however, that Telco shall have no obligation to measure or forecast the volume of traffic of each Interconnection Arrangement associated with each POI. When extraordinary changes are anticipated, each Party shall provide additional timely forecasts to account for such changes. For Telco-to-Carrier traffic, Telco shall determine the number and type of Interconnection Arrangements needed to connect to each of Carrier's POIs to handle the actual and forecasted traffic in accordance with industry standards and the blocking standards specified in Section 5 (INTERCONNECTION ARRANGEMENTS) hereof. Telco shall employ such forecasts, actual traffic volumes and sound engineering practices to provide such Interconnection Arrangements. The semi-annual forecasts shall include:

- 6.1.1 Yearly forecasted trunk quantities (which include measurements that reflect actual Tandem Switch and End Office Switch Interconnection and Interconnection Trunks and Tandem Switch-subtending Interconnection End Office Switch equivalent Interconnection Trunk requirements) for two (2) years (current year and one additional year) by quarter;

6.1.2 Identification of each Interconnection Trunk by the from and to Common Language Location Identifiers ("CLLI"), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100; and

6.1.3 A description of major system projects that affect the other Party. Major system projects include trunking or system rearrangements, shifts in anticipated traffic patterns, or other activities by Carrier that are reflected by a significant increase or decrease in trunking demand for the following forecasting period.

6.2 Network Notices. Telco shall also provide Carrier with notice of all applicable network changes which are provided to telephone exchange service providers under Applicable Laws.

## **7. UNBUNDLED NETWORK ELEMENTS.**

7.1 Availability. Where technically feasible, Telco shall make non-discriminatory access to unbundled network elements available to Carrier in accordance with Applicable Laws for the provision of Telecommunications Services. Upon Carrier's request, the Parties agree that they will negotiate the specific network elements and the terms and conditions on which these network elements will be provided.

7.2 Regulatory Actions. Telco's provision of non-discriminatory access to unbundled network elements under this Agreement is subject to the provisions of the Act, including, but not limited to, Section 251(d). Both Parties reserve the right to dispute whether any unbundled network elements must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, and whether these unbundled network elements can be used for Interconnection. In the event that the FCC, or any other Governmental Authority finds, rules and/or otherwise orders that any of the unbundled network elements and/or unbundled network element combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed to the extent required to immediately effectuate the subject order upon written request of either Party. Likewise if such Governmental Authority by a final and effective order finds that an unbundled network element and/or unbundled network element combination not provided for in this Agreement meets the necessary and impair standard, this Agreement shall be modified upon request of either Party to effectuate such order. In such event, the Parties shall expend diligent efforts to arrive at an agreement on the modifications required to the Agreement to immediately effectuate such order. If negotiations fail, disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution provisions set forth in this Agreement.

## **8. TRANSIT TRAFFIC**

8.1 Transiting Service. Each Party hereunder shall allow the other Party to send and receive Transit Traffic through such Party's network ("Transiting Service"). Carrier-to-Telco Transit Traffic will be delivered by Carrier to Telco's Tandem Switches. Telco-to-Carrier Transit Traffic will be delivered by Telco using the same Interconnection Arrangements as Local Calls.

8.2 Billing. Each Party providing a Transiting Service ("Transiting Service Provider") shall be entitled to charge the Telecommunications Carrier originating the Transit Traffic, and such Telecommunications Carrier shall pay the Transiting Service Provider, the Transiting Service charge set forth in Appendix - Pricing (Paging). Except as may otherwise be provided herein, the terminating Telecommunications Carrier will have no liability to the Transiting Service Provider for Transit Traffic originated by other Telecommunications Carriers nor shall the Transiting Service Provider have any liability to the terminating Telecommunications Carrier for Transit Traffic originated by other Telecommunications Carriers. Other than the Transiting Service charge paid by the originating Telecommunications Carrier, the Transiting Service Provider will not bill either the originating or terminating Telecommunications Carrier for transport, switching, and termination of Transit Traffic.

8.3 No IXC Transit Traffic. Carrier shall not route terminating Transit Traffic from a third party IXC (e.g., not Carrier or an Affiliate of Carrier) destined for an End Office Switch in Telco's network over the

Interconnection Trunks provided herein. Carrier shall not deliver traffic to Telco under this Agreement from a non-CMRS Telecommunications Carrier.

**8.4 Direct Connect.** Where Telco has in place direct Interconnection Trunks employing Type 2A interface to a Carrier MSC, Telco shall deliver calls destined to terminate at that Carrier MSC via such direct Interconnection Trunks and not via another Telecommunications Carrier's Tandem Switch; provided, however, that in an emergency Telco may temporarily reroute calls destined to terminate at that Carrier MSC via another Telecommunications Carrier's Tandem Switch and, since Carrier will not be able to record Telco's traffic during such temporary rerouting, the Parties agree that the traffic delivered to Carrier during such temporary rerouting, via the interconnection facilities connected to the other Telecommunications Carrier's Tandem Switch, less the previous three (3) months average traffic for such interconnection facilities shall be deemed the Telco-to-Carrier traffic delivered to Carrier during such temporary rerouting, but in no event shall Carrier be compensated for more than the total traffic delivered over such interconnection facilities; provided, further, that if the Parties determine that Telco was not the only Telecommunications Carrier re-routing traffic originating on its network to be terminated to Carrier over such interconnection facilities, then the Parties shall negotiate in good faith appropriate compensation arrangements for such re-routed traffic.

**8.5 Third Party Arrangements.** The Parties agree that it is incumbent on the Party that originates Transit Traffic to establish billing arrangements directly with any third party Telecommunications Carriers to which it may send traffic by means of a Party's Transiting Service. In the event that a Party does send Transit Traffic through the other Party's network to a third party Telecommunications Carrier with whom such Party does not have a traffic interchange agreement, and such third party Telecommunications Carrier makes a Claim against the Transiting Service Provider for compensation, the Transiting Service Provider will advise both the originating Party and the third party Telecommunications Carrier that they need to resolve the matter between themselves. If the Transiting Service Provider does so, then the originating Party will indemnify the Transiting Service Provider for any termination charges the Transiting Service Provider subsequently is ordered by a regulatory agency or court to pay such third party Telecommunications Carrier for such Transit Traffic, and for any billing and collection costs, and attorneys' fees related to those termination charges. In the event of any such proceeding, the Transiting Service Provider agrees to allow the originating Party to participate as a party.

**8.6 Indirect Termination.** If either Party originates traffic destined for termination to the other Party, but delivers that traffic to the other Party through another Telecommunications Carrier, the terminating Party shall be entitled to charge transport and termination rates as set forth in Appendix – Pricing (Paging) to the originating Party. The originating Party shall also be responsible for paying any Transiting Service charges, if any, charged by the other Telecommunications Carrier. The terminating Party shall not charge the Transiting Service Provider for calls that are terminated to it via transit arrangements provided by the Transiting Service Provider. The terminating Party shall not default bill the Transiting Service Provider for unidentified traffic terminating to the terminating Party, unless otherwise provided for in this Agreement.

**8.7 Primary Toll Carrier.** Notwithstanding anything contained herein to the contrary, when Telco is the primary toll carrier for an independent LEC in the State and such independent LEC originates a call that terminates on Carrier's network, Carrier will bill, and Telco will pay, compensation to Carrier for toll traffic originating from such independent LEC and terminating on Carrier's network as though the traffic originated on Telco's network.

**8.8 Transit Traffic Percentage.** As of the Effective Date hereof, the Parties cannot accurately measure the amount of Transit Traffic delivered by the Parties to each other through the Interconnection Arrangements provided for herein. Accordingly, the Parties agree that twenty-five percent (25%) of the traffic exchanged hereunder in each direction shall be deemed Transit Traffic. Notwithstanding the foregoing, should either Party provide to the other Party a State-specific traffic study and/or other network information regarding Transit Traffic in complete and appropriate form (determined in good faith) ("Transit Traffic Information"), the Parties shall use such Transit Traffic Information to negotiate the appropriate percentage

of traffic exchanged hereunder that is deemed Transit Traffic. If such Transit Traffic Information is provided within ninety (90) days after this Agreement is executed by duly authorized representatives of both Parties, then any revised percentage of traffic deemed Transit Traffic, which is derived using such Transit Traffic Information, shall be effective as of the date on which the Transit Traffic Information was provided to the other Party, but no earlier than the Effective Date of this Agreement; otherwise, such revised percentage of traffic deemed Transit Traffic, which is derived using such Transit Traffic Information, shall be effective as of the date such Transit Traffic Information was provided in complete and appropriate form (determined in good faith) to the other Party. Any revised percentage of traffic exchanged hereunder deemed to be Transit Traffic that becomes effective during the Initial Term of the Agreement will remain in effect during the Initial Term of the Agreement. After the expiration of the Initial Term hereof, the percentage of traffic exchanged hereunder deemed Transit Traffic during the Initial Term shall remain in effect thereafter unless either Party provides new Transit Traffic Information to the other Party. In such case, the Parties shall use that new Transit Traffic Information to renegotiate in good faith a new revised percentage of traffic exchanged hereunder deemed Transit Traffic. Renegotiation of the percentage of traffic exchanged hereunder deemed Transit Traffic after the Initial Term shall occur no more frequently than once every twenty-four (24) months.

## **9. TRANSMISSION AND ROUTING OF EXCHANGE ACCESS SERVICE TRAFFIC**

9.1 Scope. This Section provides the terms and conditions for the exchange of traffic between Carrier's network and Telco's network for Switched Access Services to IXC's, thus enabling Carrier Customers to access IXC's for the exchange and routing of interMTA and interLATA calls.

### **9.2 IXC Traffic**

- 9.2.1 Carrier may send traffic to IXC's via Type 2A interface utilizing Feature Group D protocol.
- 9.2.2 If interexchange traffic is handed from Telco directly to an IXC, from Carrier directly to an IXC, from Carrier to an IXC via Interconnection Trunks with Type 2A interfaces, or from an IXC directly to Telco, or from an IXC to Carrier via Interconnection Trunks with Type 1 or 2A interfaces, access charges shall not apply to Carrier.
- 9.2.3 When used in the Carrier-to-Telco direction, Interconnection Arrangements employing a Type 2A interface may be provided to a Telco Tandem Switch to transport calls from Carrier's MSC to an IXC's Switched Access Services Feature Group D service at the same Tandem Switch. This arrangement requires a separate Interconnection Trunk Group employing a Type 2A interface. Carrier will provide Telco with documentation of an agreement between Carrier and each such IXC for the delivery of such calls.

### **9.3 InterMTA Traffic**

- 9.3.1 As of the Effective Date hereof, the Parties cannot accurately measure the amount of Carrier-to-Telco InterMTA Traffic delivered by Carrier to Telco through the Interconnection Arrangements provided for herein. Accordingly, for purposes of this Agreement, the Parties agree that twelve percent (12%) of the Carrier-to-Telco traffic delivered by Carrier to Telco through the Interconnection Arrangements provided for herein shall be deemed InterMTA Traffic. No amount of Telco-to-Carrier traffic shall be deemed InterMTA Traffic. Notwithstanding the foregoing, should either Party provide to the other Party State specific network engineering information, a State specific InterMTA Traffic study, and/or other support in complete and appropriate form (determined in good faith) ("InterMTA Traffic Information"), the Parties shall use such InterMTA Traffic Information to negotiate in good faith a mutually acceptable percentage of Carrier-to-Telco traffic delivered by Carrier to Telco that is deemed InterMTA Traffic. If such InterMTA Traffic Information is provided within ninety (90) days after this Agreement is executed by duly authorized representatives of both Parties, then any revised percentage of Carrier-to-Telco traffic deemed InterMTA Traffic, which is derived using such InterMTA

Traffic Information, shall be effective as of the date such InterMTA Traffic Information was provided to the other Party, but no earlier than the Effective Date of this Agreement; otherwise, such revised percentage of Carrier-to-Telco traffic deemed InterMTA Traffic, which is derived using such InterMTA Traffic Information, shall be effective as of the date such InterMTA Traffic Information was provided in complete and appropriate form (determined in good faith) to the other Party. Any revised percentage of Carrier-to-Telco traffic deemed InterMTA Traffic that becomes effective during the Initial Term of this Agreement will remain in effect during the Initial Term hereof. After the expiration of the Initial Term, the percentage of Carrier-to-Telco traffic deemed InterMTA Traffic during the Initial Term shall remain in effect thereafter until either Party provides new InterMTA Traffic Information to the other Party. In such case, the Parties shall use the new InterMTA Traffic Information to renegotiate in good faith a new revised percentage of Carrier-to-Telco deemed InterMTA Traffic. Renegotiation of the percentage of Carrier-to-Telco traffic deemed InterMTA Traffic after the Initial Term shall occur no more frequently than once every twenty-four (24) months.

## **10. TRANSMISSION AND ROUTING OF OTHER TYPES OF TRAFFIC**

### **10.1 Ancillary Services Traffic.**

10.1.1 When delivering Ancillary Services traffic to Telco, Carrier must use at least one connection in each LATA dedicated solely for Ancillary Services traffic. The connection used must be an Ancillary Services Connection.

10.1.2 Notwithstanding Section 10.1.1 hereof, 411 and/or operator services traffic may be delivered through a dedicated Interconnection Trunk employing a Type 2A interface to a Telco Operator Services Switch.

### **10.2 Wireless 911 Services.**

10.2.1 With respect to all matters relating to 911 and/or E911 Services, the Parties shall: (i) continue to handle such services as they do today and (ii) work together to meet any and all applicable requirements mandated under Applicable Laws. The Parties acknowledge and agree that as applicable requirements are met and implemented, additional charges for 911 and/or E911 Services may apply.

10.2.2 For the provision of 911 and/or E911 Services, Carrier may provide its own Facilities or purchase Facilities from a third party to connect its network with Telco's 911 Tandem. Alternatively, Carrier may purchase appropriate Facilities from Telco.

10.2.3 Provision of 911 and/or E911 Services under this Agreement are according to applicable tariff, this Section 10.2 (Wireless 911 Services) and, as to E911 only, pursuant to terms and conditions mutually agreed upon by the Parties prior to the provision of E911.

10.2.4 Wireless E911 Services are not considered Ancillary Services and cannot be provided using Ancillary Services Connections.

10.2.5 **THIS SECTION APPLIES ONLY TO TEXAS:** Within thirty (30) days of Carrier providing Telco with notice, pursuant to Section 5.1.1 (Facilities) hereof, of commencement of the origination of Carrier-to-Telco traffic, Telco and Carrier shall notify The Advisory Commission on State Emergency Communications for the State of Texas if they are routing 911/E911 calls to seven or ten digit screening numbers instead of directly through as 911/E911 calls and they shall specify the areas where such is occurring and under what type of conditions. Upon request of the appropriate 911/E911 customer (PSAP), the Parties shall cease the practice of routing 911/E911 calls to seven or ten digit screening numbers instead of directly through as 911/E911 calls. The Parties agree that the 911/E911 service is provided for the use of the 911/E911 customer, and recognize the

authority of the 911/E911 customer to establish service specifications and grant final approval (or denial) of service configurations or modifications offered by Telco and Carrier. The terms and conditions for 911/E911 service in this Agreement shall be subject to renegotiation in the event that the 911/E911 customer orders changes to the 911/E911 service that necessitate revision of this Agreement, but implementation of wireless 911/E911 shall not be delayed pending any such renegotiation.

10.3 Directory Assistance. If and when Carrier requests directory assistance services, the Parties will negotiate mutually agreed upon terms and conditions for the provision of such directory assistance services.

10.4 Operator Assisted Calls. Operator assisted calls are limited to 0+ or 0- calls on a sent paid basis only. The term "sent paid" means that all calls must be paid for by Carrier's Customer at the time the call is placed. This can be accomplished by using a telecommunications credit card, placing the call collect or billing the call to a third number. No charges are incurred by Carrier.

10.5 Calling Party Pays Traffic. If Telco provides Calling Party Pays services within the State and Carrier elects to use Telco's Calling Party Pays services, the Parties shall negotiate appropriate amendments to this Agreement. However, Telco will have no contractual obligation created herein to offer Calling Party Pays service.

10.6 Billed Number Screening. Billed Number Screening shall be available to prevent billing of inward calls to Carrier on a received-collect or third-number basis in either a Dedicated NPA-NXX or DID number block. There are no charges associated with this service. This service will be provided to Carrier unless Carrier informs Telco in writing that it does not want this option. Telco will provide the screening instructions associated with Carrier's telephone numbers for inquiries from Telecommunications Carriers which have arrangements with Telco to access the Billed Number Screening database.

10.7 Area Wide Calling Plan. Telco agrees to provide Carrier with an Area Wide Calling Plan ("AWCP") in those LATAs where Telco provides AWCP to any other CMRS carrier. AWCP permits Telco's Customers to call certain Carrier Customers from any location within the LATA without incurring a toll charge. In those States where AWCP is provided pursuant to tariff, Carrier shall purchase such AWCP service pursuant to Telco's then effective State tariffs. In those States where AWCP is not provided pursuant to tariff but is provided pursuant to agreement, such AWCP service shall be provided pursuant to this Agreement and according to the same terms and conditions on which AWCP is provided to such other CMRS carriers in such LATAs. Telco may discontinue AWCP to Carrier in a State on at least twelve (12) months prior written notice to Carrier; provided, however, if notice of termination has already been given to all other CMRS carriers in the LATA, Carrier shall discontinue AWCP on the same date as those other CMRS carriers; provided, further, that if Telco agrees to provide, is obligated to provide, or otherwise provides AWCP to any other CMRS carrier within the same LATA where Carrier has AWCP services ("Competing Carrier") or if Telco has been unable to convert all of Carrier's AWCP NPA-NXXs to standard billing by the cut off, then, at Carrier's request, Telco shall (a) continue to provide AWCP to Carrier on existing AWCP NPA-NXXs in such LATA until Telco no longer provides AWCP to any Competing Carrier in that LATA and Telco converts all of Carrier's AWCP NPA-NXXs to standard billing, and (b) establish new AWCP NPA-NXXs for Carrier upon request, but only if Telco has provided any Competing Carrier with new AWCP NPA-NXXs or with AWCP NPA-NXXs which have been converted from standard billing. If Telco extends the period of time in which it provides AWCP to Carrier under this Section, Telco shall provide Carrier with the same notice, if any, of the date on which AWCP will no longer be available to Carrier as Telco provides to all other CMRS providers in the State having AWCP service, but no less than ninety (90) days prior written notice of the date on which AWCP will no longer be available to Carrier. When Telco ceases providing AWCP to Carrier and all other Competing Carriers, Carrier will agree to abide by the cessation notice and cease using reverse billing as provided herein.

## **11. NUMBER PORTABILITY.**

11.1 Regulatory Requirements. The Authorized Services provided by Carrier are currently excluded by the FCC from number portability requirements. Accordingly, Carrier has no obligation to provide number portability. If at some point, the Authorized Services are subject to number portability requirements, the Parties shall negotiate in good faith the changes necessary in this Agreement to effectuate number portability in accordance with Applicable Laws. If Carrier is then required to port numbers, Telco will not administer the database for those numbers, absent separate agreement.

11.2 Blocking. The Parties reserve the right to block default routed calls incoming to their networks in the event of significant network failure in order to protect their network from overload, congestion, or failure propagation. If Telco implements a process by which it notifies other CMRS providers when Telco blocks default routed traffic to such providers, Telco will make such process available to Carrier on the same terms and conditions as it is available to such other CMRS providers.

### **11.3 Number Portability.**

11.3.1 If the Authorized Services are subject to number portability requirements, the Parties agree to implement such number portability requirements, in compliance with FCC or Commission orders, within and between their networks as soon as technically feasible, but no later than the schedule established by the FCC or the Commission.

11.3.2 Each Party shall recover its costs for number portability in accordance with FCC or Commission orders.

11.3.3 Except as otherwise agreed between the Parties in writing, to the extent that a Party performs a query or is required to perform a query pursuant to its obligations under any Applicable Laws or this Agreement, that Party will make such arrangements to perform its own queries for ported calls on an N-1 basis, where N is the entity terminating the call to the end-user. If Telco is the entity terminating a call to an end-user and Carrier originates the call, then Carrier is the N-1 entity, and if Carrier fails to make the appropriate query, Telco will charge Carrier in accordance with Telco's applicable tariff. If Carrier is the entity terminating a call to an end-user and Telco either originates the call or the call is Transit Traffic delivered to Carrier by Telco, then Telco is the N-1 entity, and Telco shall make the appropriate query.

11.3.4 The Parties shall cooperate in conducting testing to ensure interconnectivity between their networks. Each Party shall inform the other of any network updates that may affect the other's network and shall, at the other's request, perform tests to validate the operation of the network.

11.3.5 If the Authorized Services are subject to number portability requirements, prior to the date that number portability is implemented by both Parties, the Parties agree to cooperatively establish terms, conditions, and procedures for porting telephone numbers.

## **12. COMPENSATION FOR LOCAL AUTHORIZED SERVICES INTERCONNECTION**

12.1 Compensation for Local Calls Transport and Termination. Subject to the limitations set forth herein, Telco shall compensate Carrier for the transport and termination of Local Calls originating on Telco's network and terminating on Carrier's network, and Carrier shall compensate Telco for the transport and termination of Local Calls originating on Carrier's network and terminating on Telco's network. The rates of each Party for such transport and termination of Local Calls are set forth in Appendix -Pricing (Paging). Compensation for Local Calls shall apply solely to the transport and termination of Local Calls, which shall not include, without limitation, the following:

12.1.1 Non-Authorized Services traffic;

- 12.1.2 Traffic which does not consist of Local Calls, including, but not limited to, interstate access roaming traffic;
- 12.1.3 Toll-Free Service calls (e.g., 800/888), Information Services Traffic, 500 and 700 calls;
- 12.1.4 InterMTA traffic;
- 12.1.5 Transit Traffic;
- 12.1.6 Any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission.

12.2 Internet Traffic. The Parties agree that Internet Traffic between them, if any, is presently *de minimis*. At such time as either Party can economically track and measure such Internet Traffic, such Party may remove such Internet Traffic from the calculation of reciprocal compensation between the Parties by providing to the other Party appropriate evidence of the existence of such Internet Traffic. Records will be retained of all such removed Internet Traffic. Upon the conclusion of FCC proceeding CC Docket No. 99-98, the compensation rate established in that proceeding applicable to Internet Traffic (or, if no such rate is established in that proceeding, a compensation rate otherwise established pursuant to the requirements of such proceeding) shall be applied retroactively to all removed traffic as described above.

12.3 Measuring Calls as Local Calls. In order to measure whether traffic comes within the definition of Local Calls for purposes of calculating reciprocal compensation, the Parties agree as follows:

- 12.3.1 For Telco, the origination or termination point of a call shall be the V & H coordinates of the End Office Switch that serves, respectively, the calling party (when such call is originated by Telco) or called party (when such call is originated by Carrier) at the beginning of the call.
- 12.3.2 For Carrier, the origination or termination point of a call shall be the V & H coordinates of the Carrier's MSC which serves, respectively, the calling party (when such call is originated by Carrier) or called party (when such call is originated by Telco) at the beginning of the call.

12.4 Billing And Recording.

- 12.4.1 Each Party will record its terminating traffic. Each Party will perform the necessary call recording and rating for its respective portions of an interchanged call. Each Party shall be responsible for billing and collection from their respective Customers for the Telecommunications Services such party provides such Customer. Each Party shall use procedures that record and measure actual usage for purposes of providing invoices to the other Party pursuant to this Agreement. To the extent that Telco does not record the actual amount of Telco-to-Carrier traffic, exclusive of Third Party Traffic (as defined in Section 12.4.2 below), and Carrier does not have the ability to record actual amount of such Telco-to-Carrier traffic, Carrier shall bill Telco the charges for interchanged calls as set forth in Sections 12.4.2 and 12.4.3 hereof.
- 12.4.2 When Telco does not record the actual amount of Telco-to-Carrier traffic, exclusive of Third Party Traffic, and Carrier does not have the ability to record the actual amount of such Telco-to-Carrier traffic, the Parties agree to use a Surrogate Billing Factor to determine the amount of Telco-to-Carrier traffic. For purposes of this section, Third Party Traffic means any traffic which originates from Telecommunications Carriers other than Telco including, but not limited to, Transit Traffic, ported number traffic, call forwarded traffic from a third party LEC, and traffic originated by other Telecommunications Carriers using partial number blocks, InterMTA traffic, and IXC traffic. Unless otherwise mutually agreed upon by the Parties, the Surrogate Billing Factor, shall be deemed to be equal to the Shared Facility Factor stated in Appendix – Pricing (Paging). When using the Surrogate Billing Factor instead of recording actual usage, the amount of Telco-to-Carrier



Conversation MOUs for Local Calls shall be deemed to be equal to the product of (i) the Carrier-to-Telco Conversation MOUs for Local Calls (based on Telco's monthly bill to Carrier) divided by the difference of one (1.0) minus the Surrogate Billing Factor, and (ii) the Surrogate Billing Factor. When using the Surrogate Billing Factor, Carrier shall bill Telco the charges due under this Section 12 (COMPENSATION FOR LOCAL AUTHORIZED SERVICES INTERCONNECTION) based solely on the calculation contained in the preceding sentence.

- 12.4.3 When Carrier uses the billing method set forth in Section 12.4.2, Carrier shall use the Telco invoice to identify the Telco CLLI codes from which the traffic is delivered to Carrier as well as the number of Conversation MOU for each inbound trunk route. All adjustment factors and resultant adjusted amounts shall be shown for each line item, including as applicable, but not limited to, the Surrogate Billing Factor from Section 12.4.2, the blended call set-up and duration factors, the adjusted call set-up and duration amounts, the appropriate rate, amounts, etc.

12.5 Compensation for Interconnection Arrangements. The following shall apply for Interconnection Arrangements used solely for the transport of Interconnection traffic between the Parties' respective networks.

- 12.5.1 Originating Party Provides Its Own Interconnection Arrangements. When a Party uses its own Interconnection Arrangements (either through self provisioning, or through purchase of Facilities from the other Party or from third parties) to deliver traffic originating on its network to the POI, such Party shall provide such Interconnection Arrangements at its sole cost and expense; provided, however, that to the extent a Party delivers traffic not originating on its network to the POI, the terminating Party shall pay an amount equal to the costs of such Interconnection Arrangements times the percentage of traffic deemed Transit Traffic pursuant to Section 8.8 (Transit Traffic Percentage) hereof unless Carrier's Updated Network Information shows that the Facility mileage average in a State in which Carrier has Interconnection Arrangements with Telco is at or below the State Facility Mileage Average for such State set forth in Section 5.1.3 (Existing Interconnection Arrangements), in which case Telco shall use its own Interconnection Arrangements to deliver all traffic to the POI at its sole cost and expense and no compensation under this Section 12.5 (Compensation for Interconnection Arrangements) shall be due to or from Carrier.

- 12.5.2 Originating Party Uses Terminating Party's Facilities. When a Party uses Interconnection Arrangements dedicated to the transmission of Authorized Services traffic between the Parties' two networks, which are provided by the other Party (either through self provisioning, or through the purchase of Facilities from the other Party or from third parties), to deliver Interconnection traffic originating on its network, and such Interconnection Arrangements are also used by such other Party to deliver such other Party's own Interconnection traffic to such Party, such Party will reimburse the other Party for a proportionate share of the cost of Interconnection Arrangements incurred by the other Party under this Agreement; provided, however, that for Interconnection Arrangements utilizing DS-3 Facilities, if the total Facilities charges for the number of active DS-1s in such Facilities dedicated to the delivery of Interconnection traffic provided on an individual basis (that is, Facility charges for smaller Facilities than the Facility on which compensation is sought) would be less than the Facilities charges for the DS-3 Facilities, then the Facilities charges related to such DS-3 Facilities shall be negotiated between Telco and Carrier on a case by case basis, within sixty (60) days after the date this Agreement is executed by duly authorized representatives of both Parties as to existing Facilities, and as to new Facilities as such Facilities are put in place; provided, further, that the Parties reserve their rights as to whether sharing of costs is required or appropriate for

the costs of shared Facilities higher than DS-3. In any instance covered by this Section 12.5.2, the following applies:

12.5.2.1 If either Party can measure the actual amount of traffic delivered to it over such Interconnection Arrangements at any time during the term hereof, the Parties will negotiate in good faith compensation arrangements for the allocation of the applicable Interconnection Arrangements costs between them with the Party, who is delivering Interconnection traffic originating on its network through Interconnection Arrangements provided by the other Party, paying a proportion of the costs of such Interconnection Arrangements equal to the proportion of the traffic originated by such Party over the total traffic exchanged over the Interconnection Arrangements.

12.5.2.2 If neither Party can measure the actual amount of traffic delivered to it over such Interconnection Arrangements during the term hereof, the Party, who is delivering Interconnection traffic originating on its network through Interconnection Arrangements provided by the other Party, shall pay to the other Party providing such Interconnection Arrangements the costs of such Interconnection Arrangements times either (a) when Telco is providing such Interconnection Arrangement, the Shared Facility Factor set forth in Appendix -- Pricing (Paging) or (b) when Carrier is providing such Interconnection Arrangement, the difference of 1 minus the Shared Facility Factor set forth in Appendix -- Pricing (Paging); provided, however, that either Party may submit to the other Party a traffic study, a reasonable estimate of its traffic with supporting justification for such estimate, and/or other network information in complete and appropriate form (determined in good faith)("Shared Facility Information") that the Parties will use to negotiate in good faith a different Carrier-specific Shared Facility Factor. The Shared Facility Information must be Carrier-specific and relate to Carrier's network in the State; it shall not be based on industry average data or the data of other Telecommunications Carriers. If such Shared Facility Information is provided within ninety (90) Days after the date this Agreement is executed by duly authorized representatives of both Parties, then any Carrier-specific Shared Facility Factor derived using such Shared Facility Information shall be effective as of the date on which the Shared Facility Information was provided in complete and appropriate form (determined in good faith) to the other Party, but no earlier than the Effective Date of this Agreement; otherwise, the Carrier-specific Shared Facility Factor will be effective as of the date the amended Agreement containing that new Shared Facility Factor is approved by the Commission. The Carrier-specific Shared Facility Factor shall remain in effect during the Initial Term of the Agreement. After the expiration of the Initial Term hereof, the Carrier-specific Shared Facility Factor shall remain in effect until either Party provides new Shared Facilities Information to the other Party. In such case, the Parties shall use that new Carrier-specific Shared Facility Information to renegotiate in good faith a new revised Carrier-specific Shared Facilities Factor. Renegotiation of the Carrier-specific Shared Facility Factor shall occur no more frequently than once every twenty-four (24) months. The Shared Facility Factor represents Carrier's portion of the cost of Interconnection Arrangements used for traffic originated by both Parties and is calculated based on the relative traffic volumes of Local Calls, less any traffic excluded under Subsections 12.1.1 through 12.1.6 hereof.

- 12.5.3 CCS Charges. If Carrier converts to CCS signaling, the Parties shall share in the costs of such CCS signaling on a basis that is at least as favorable to Carrier as Telco shares the costs of such CCS signaling with any other CMRS Carrier in the State.

### 13. BILLING AND PAYMENT

13.1 Delivery of Invoices. Not later than thirty (30) days following the end of each monthly billing cycle, each Party shall deliver to the other Party an invoice reflecting the amount due from the other Party for charges attributable to the month covered by such billing cycle. Carrier will either bill Telco under separate invoice for Telco's proportionate share of Interconnection Arrangements, as stated within Section 12.5 (Compensation for Interconnection Arrangements), or, if available, Telco may automatically net their proportionate use from the invoice provided to Carrier.

#### 13.2 Charges and Payment.

- 13.2.1 Payment. Each Party agrees to pay the other all undisputed billed amounts by the earlier of (i) the payment date, which may be set no earlier than thirty (30) days after the bill date, or (ii) the next bill date (i.e. the same date in the following month as the bill date). The undisputed portions of all bills are to be paid when due. If the date on which a bill is due as provided above is on a day other than a business day, payment will be made on the next business day. Payments will be made in U.S. dollars.
- 13.2.2 Usage Sensitive Charges. All usage-sensitive charges hereunder shall be billed monthly in arrears by both Parties.
- 13.2.3 Non-usage Sensitive Charges. All non-usage-sensitive monthly charges, including, but not limited to, all charges for Interconnection Arrangements, shall be billed monthly in advance, except those charges due for the initial month, or a portion of the initial month during which new Services or Facilities are provided, which will be included in the next bill rendered.
- 13.2.4 Facilities Charges. All Facilities charges owed to Carrier by Telco under Section 12.5 (Compensation for Interconnection Arrangements), above, shall be billed by Carrier to Telco thirty (30) days following receipt by Carrier of Telco's invoice.
- 13.2.5 Late Payment Charge. Bills will be considered past due thirty (30) days after the bill date or by the next bill date (i.e., same date as the bill date in the following month), whichever occurs first, and are payable in immediately available U.S. funds. If the amount billed is received by the billing Party more than thirty (30) days after the bill date or after the next bill date, or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, or if payment is not in U.S. dollars, then a late payment charge will apply to the unpaid balance. The late payment charge for bills rendered by Telco if there is an applicable State tariff will be as set forth in Telco's applicable State tariff. The late payment charge for bills rendered by Carrier, and, if there is no applicable Telco state tariff in the State, for bills rendered by Telco, will be as follows: any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1 1/2%) per month or (ii) the highest rate of interest that may be charged under Applicable Law.
- 13.2.6 Billing Disputes. The billed Party has sixty (60) days after the receipt of an invoice to dispute in writing the charges on such invoice which have been withheld from the billing Party. Written notice of the billing dispute will include sufficient detail for the billing Party to be able to properly investigate the dispute. If the Parties' billing contacts are unable to resolve the dispute within sixty (60) days after receipt of the written notice, the issue shall be referred to the appropriate senior business representatives who will then have thirty (30) days to resolve the dispute. In the event that the billing dispute cannot be resolved by the appropriate senior business representatives, either Party may proceed in

accordance with Section 22 (DISPUTE RESOLUTION) hereof.

- 13.2.7 Backbilling. Neither Party may assess charges for Interconnection Arrangements or services provided pursuant to this Agreement which are not billed within one (1) year of the date such charges accrued or should have been charged pursuant to this Agreement. The billed party may dispute such charges in accordance with Section 13.2.6 (Billing Disputes) hereof. This subsection shall not apply when true-ups are provided for in this Agreement or are the result of Section 16.6 (Results of Audits) hereof.
- 13.2.8 Backcredits. Neither Party may request credit for any billing by the other Party pursuant to this Agreement more than one (1) year after the date of the bill on which the service, Interconnection Arrangement, or other charge was billed. Any such request will be in writing, sent to the other Party, and contain sufficient detail to allow the other Party to properly investigate the request. If the request for credit leads to a billing dispute, such dispute shall be handled in accordance with Section 13.2.6 (Billing Disputes) hereof. This subsection shall not apply to requests for credit when the true-ups are provided for in this Agreement or are the result of Section 16.6 (Results of Audits) hereof.
- 13.2.9 Tariffed Items. Where charges specifically refer to tariffed rates, those tariffed charges and those alone shall be deemed amended to conform to any FCC or Commission authorized modifications that may hereafter occur to the tariff rates for such equivalent items. Such amendments shall become effective upon the effective date of tariff modifications. Telco shall provide Carrier with notice in accordance with Applicable Laws but in no event, later than the time of filing of such tariff modification with the Governmental Authority.
- 13.2.10 Adjustments. Subject to Section 13.2.8 (Backcredits) hereof, a Party shall promptly reimburse or credit the other Party for any charges that should not have been billed to the other Party as provided in this Agreement. Such reimbursements shall be set forth in the appropriate section of the invoice. Subject to Section 13.2.7 (Backbilling) hereof, a Party shall bill the other Party for any charges that should have been billed to the other Party as provided in this Agreement, but have not been billed to the other Party.

### 13.3 Invoice Detail.

- 13.3.1 Invoices between the Parties shall include, but not be limited to the pertinent following information to the extent applicable:
- a. Identification of the monthly bill period (from and through dates)
  - b. Current charges
  - c. The basis for the charges pursuant to Section 13.3.4 hereof
  - d. Past due balance
  - e. Adjustments
  - f. Credits
  - g. Payments
  - h. Contact telephone number for billing inquiries
  - i. Late payment charges
- 13.3.2 The Parties will provide a remittance document with each invoice identifying:
- a. Remittance address
  - b. Invoice number and/or billing account number
  - c. Summary of charges
  - d. Amount due
  - e. Payment due date (at least thirty (30) days from the bill date/date of invoice)

- 13.3.3 Invoices between the Parties will be provided on paper which will be the primary bill, unless a mechanized or electronic format is mutually agreed upon and subsequently designated in writing by both Parties as the primary bill.
- 13.3.4 Invoices from Carrier for reciprocal compensation will be based on the number of pages; provided, however, that if Carrier can measure all traffic exchanged hereunder in Conversation MOUs in a State, then the invoices from Carrier for reciprocal compensation for that State will be based on the amount of Conversation MOUs. When the Parties use Conversation MOUs, they will be measured in seconds for all Completed Calls, which are totaled (by originating and terminating CLLI code) for the monthly billing cycle and aggregated for all CLLI codes and then rounded up to the next whole minute.
- 13.3.5 Carrier will bill Telco by State, based on the location of the Carrier MSC which switches the call. When the Parties use Conversation MOUs, Carrier will display the CLLI code(s) of the POIs where the exchange of traffic between Telco and Carrier takes place as well as the number of Completed Calls and Conversation MOUs for each Interconnection Trunk/Trunk Group. If Carrier's POI does not have a CLLI code, Carrier will display the unique identifier it assigned to its location. Telco will bill Carrier by LATA and by the End Office/Tandem Switch, based on the terminating location of the call and will display and summarize the number of Completed Calls and Conversation MOUs, for each terminating office.
- 13.4 No Netting. Unless otherwise provided herein, there will be no netting of payments due herein against other amounts owed by one Party to the other.
- 13.5 Verification Process. Either Party may request in writing that the other Party verify the accuracy of amounts shown on invoices provided pursuant to this Agreement. The Party receiving the written request shall provide information reasonably sufficient to verify its invoices within thirty (30) days after the request date. If the requesting Party still questions an amount shown on an invoice, then such Party may give written notice of commencement of the dispute resolution process in accordance with the terms of this Agreement.
- 13.6 Lost or Damaged Data. In the event that either Party's billing data is lost, damaged or destroyed and cannot be recovered, and this results in its inability to determine actual usage in a particular month, the Parties shall estimate the amount of revenue lost based on the Party's average monthly usage in the preceding three (3) months for which data is available and shall use the estimate as a basis for compensation among themselves. This procedure shall only be employed for (a) one month during any twelve month period or (b) period of continuous loss of usage data, whichever is longer. When the party resumes having actual usage data, the monthly usage will be calculated for the period of lost, damaged or destroyed data by averaging the usage for the three months before such period and the usage for the three months following such period. If this average monthly usage amount is more than ten percent (10%) different from the average monthly usage calculated solely on the months preceding the loss period, appropriate adjustments will be made between the parties.

#### **14. AMENDMENTS, CHANGES, AND MODIFICATIONS; WAIVER**

14.1 Notice of Change. If either Party proposes to make any permanent changes in the Interconnection Arrangements provided for in this Agreement, or any attachments, or any permanent change in its operations that would materially affect the other Party's operations or services once the Interconnection Arrangements are installed, the changing Party shall give reasonable advance written notice to the other Party of such changes, advising when such changes will be made. All such changes shall be coordinated with the non-changing Party. Nothing in this Section 14.1 (Notice of Change) shall affect the Parties' rights and obligations under this Agreement or Applicable Laws.

14.2 Responsibility for Changes. Subject to the provisions of Section 14.1 (Notice of Change) hereof, each Party shall be solely responsible, at its expense, for the overall design of its services and Facilities and

for any redesigning or rearrangement of its services and Facilities that may be required because of changes in Interconnection Arrangements, operations or procedures of the other Party, minimum network protection criteria, or operating or maintenance characteristics of the Interconnection Arrangements.

14.3 Waiver. No provision of this Agreement shall be deemed waived, amended, or modified by either Party, unless such waiver, amendment, or modification is in writing and signed by the duly authorized representatives of both Parties. Neither Party shall be bound by any preprinted terms in addition to, or different from, those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications, unless expressly agreed to by the receiving Party in writing. The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a continuing, future, or general waiver or relinquishment of the terms, conditions, rights or privileges, but this Agreement shall be and remain at all times in full force and effect.

## 15. ASSIGNMENT

15.1 Prior Consent Required. Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may assign its rights and benefits, and delegate its duties and obligations, under this Agreement without the consent of the other Party to an Affiliate of the assigning Party or to any entity which acquires substantially all of the Telecommunications assets or ownership interests of either Party. Notwithstanding the foregoing, upon any acquisition of, acquisition by, or merger with, another CMRS provider by Carrier that has an existing interconnection agreement with Telco for provision of any of the Authorized Services in the State, Carrier will, before placing any orders for additional services or Interconnection Arrangements, advise Telco which interconnection agreement will govern such Interconnection Arrangement or service and such other information regarding the acquisition or merger as is reasonably necessary for the Parties to properly operate under the interconnection agreements. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.

15.2 Binding on Assigns. This Agreement will be binding on and inure to the benefit of the Parties' respective successors and permitted assigns.

## 16. AUDITS

16.1 Responsible for Accuracy. Each Party to this Agreement will be responsible for the accuracy and quality of data submitted to the other Party.

16.2 Audit Rights. Upon reasonable written notice and at its own expense, each Party shall have the right to conduct an audit of the other Party, which audit shall be limited solely to determining compliance with the provisions of this Agreement. Such review and audit may be conducted by an employee of the reviewing Party if such employee (i) does not perform any functions for or on behalf of any Affiliate of the reviewing Party that competes with the other Party, if any, and (ii) agrees to maintain reviewed information in accordance with the confidentiality provisions of this Agreement. Alternatively, to perform such review and verification, the reviewing Party may employ an independent third party not affiliated in any way with the reviewing Party (providing such independent third party does not have a conflict of interest related to other matters before one of the Parties) who will agree to reasonable nondisclosure requirements. Neither Party may request more than one (1) such audit per State within any twelve (12) month period. This includes on-site audits during normal business hours at the other Party's or the other Party's vendor locations.

16.3 Record Retention. Each Party, whether or not in connection with an audit, shall maintain reasonable records related to charges hereunder for a minimum of twenty-four (24) months from the date of an invoice and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement.

16.4 Access Rights. Each Party's right to access information for audit purposes is limited to data not in excess of twenty-four (24) months from the date of the invoice which gives rise to the charge. Once specific data has been reviewed, it is unavailable for future audits. Any items not reconciled at the end of a review will, however, be subject to a follow-up audit effort. Any adjustments required subsequent to previously audited data will also be subject to follow-up audits. Information of either Party produced in connection with an audit shall be subject to Section 20 (CONFIDENTIAL INFORMATION) hereof.

16.5 Costs. The Party requesting an audit shall bear its own costs associated with conducting an audit. The Party being audited will provide access to required information, as outlined in this Section, at no charge to the auditing Party. Should the auditing Party request information or assistance beyond that reasonably required to conduct such an audit, the Party being audited may, at its option, decline to comply with such request or may bill actual costs incurred in complying subsequent to the concurrence of the auditing Party.

16.6 Results of Audits. If an audit uncovers any undercharge or overpayment, then the audited Party will (i) for any overpayment, promptly correct any billing error, including making refund of any overpayment by the auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of or failure to act by the audited Party, immediately compensate the auditing Party for such undercharge. Neither Party shall assess interest on any undercharge or overpayment uncovered by the audit.

## 17. AUTHORIZATION

17.1 Telco. Telco represents and warrants that they are corporations duly organized, validly existing and in good standing under the laws of the states of their incorporation, and have full power and authority to execute and deliver this Agreement and to perform their obligations hereunder.

17.2 Carrier. Verizon Wireless Messaging Services, LLC represents that it is a limited liability company and Yuma, Arizona RSA Limited Partnership represents that it is a limited liability partnership. Carrier represents and warrants that they are duly organized, validly existing and in good standing under the laws of the states of their formation, and have full power and authority to execute and deliver this Agreement and to perform their obligations hereunder.

17.3 Authority. Each Party warrants that it has obtained, or will obtain prior to operating under this Agreement, all necessary jurisdictional licenses, authorizations and/or certifications required in those jurisdictions in which it has or will order services or Facilities or will operate under this Agreement.

17.4 Carrier ACNA. The complete list of Carrier's Access Carrier Name Abbreviation (ACNA) codes covered by this Agreement is listed below. Any addition, deletion or change in name associated with these listed ACNA codes requires notice to Telco. Notice must be received before orders can be processed under a new or changed ACNA code.

Carrier ACNA List: AHG (Texas, Missouri, Nevada and Kansas), and MCB (Connecticut).

## 18. COMPLETE TERMS

18.1 This Agreement, together with all appendices, schedules, exhibits, accompanying documents, and any other attachments, constitutes the entire agreement between the Parties with respect to the interconnection of the Parties' respective networks from the Effective Date hereof forward, superseding all prior and contemporaneous discussions, representations, understandings, proposals and other communications, oral or written with respect to the interconnection of the Parties' respective networks from the Effective Date hereof forward. Appendices and any other attachments referred to herein or attached hereto are deemed incorporated in their entirety by this reference.

## 19. COMPLIANCE WITH APPLICABLE LAWS

19.1 Compliance. Each Party will comply, at its sole expense, with all Applicable Laws relating to the performance of its obligations under this Agreement, including, but not limited to, safety and health regulations, relating to one Party's activities at the other Party's locations, and shall indemnify, defend, and hold the other Party harmless from any judgments, citations, fines, forfeitures, or other penalties which are assessed against such other Party as the result solely of such Party's failure to comply with any Applicable Law.

19.2 No Violation. Interconnection Arrangements and services provided under this Agreement will not be used knowingly by either Party for any purpose or in any manner, directly or indirectly, in violation of any Applicable Law or in knowing aid of any unlawful act or undertaking by a Party.

## 20. CONFIDENTIAL INFORMATION

20.1 Definition and Use. For the purposes of this Agreement, confidential information ("Confidential Information") means confidential or proprietary technical, customer, or business information given or made available by one Party (the "Discloser") to the other (the "Recipient"). All information, which is disclosed by one Party to the other in connection with this Agreement, during negotiations and the term of this Agreement, including, but not limited to, traffic volumes, Customer Proprietary Network Information (as defined by the Act), forecasts or projections, billing information, Customer name and information, network configuration, business plans or operations, network design, systems and procedures and/or the sale, purchase, and use of services, or Customer specific information, and POI locations, will be deemed proprietary to the Discloser and subject to this Section 20 (CONFIDENTIAL INFORMATION) when marked at the time of delivery as "Confidential" or "Proprietary," or, if communicated orally, identified as "Confidential" or "Proprietary" (i) at the time of delivery, or (ii) in writing within ten (10) days thereafter. The Recipient agrees (i) to use Confidential Information only for the purpose of performing under this Agreement, (ii) to use the same degree of care (a) to hold such Confidential Information in confidence and (b) to not disclose it to anyone other than its employees and attorneys who are entitled to receive the Confidential Information hereunder and who have a need to know for the purpose of performing under this Agreement, as the recipient uses for its own confidential information of similar importance, but in no event less than reasonable care, and (iii) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information of similar importance, but in no event less than reasonable care. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, the agent or consultant must have executed a written agreement to abide by the terms of this Section 20 (CONFIDENTIAL INFORMATION). In no event shall Telco disclose any of Carrier's Confidential Information to any employee, officer, agent, or contractor of Telco, or its Affiliates or subsidiaries, who is engaged in developing, planning, marketing, or selling end user wireless products or services, determining the costs thereof, or designing prices thereof to be charged end users, and Telco shall store the Confidential Information it receives or generates during the term hereof in such a manner as to prevent disclosure to such persons.

20.2 Copies. The Recipient may make copies of the Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.

20.3 Return or Destruction. The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If a Recipient destroys such Confidential Information, then the Recipient shall certify destruction by written letter to the Discloser. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other Party immediately and use its best efforts to retrieve the lost or wrongfully disclosed information.



20.4 No Obligation. The Recipient shall have no obligation to safeguard Confidential Information that: (i) was, at the time of receipt, already known to the Recipient free of any confidentiality obligation; (ii) is, or becomes publicly known through no wrongful act of the Recipient; (iii) is rightfully received by Recipient from a third person having no restrictions on disclosure; (iv) is independently developed by Recipient without reference to the Proprietary Information; (v) is disclosed to a third person by the Discloser without similar restrictions on such third person's rights; or (vi) is approved for release by written authorization of the Discloser. The Recipient shall also have no obligation to safeguard Confidential Information that is required to be made public by the Recipient pursuant to Applicable Laws; provided, however, that the Recipient shall furnish the Discloser with written notice of such requirement as soon as possible and prior to such disclosure and the Discloser may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Recipient's compliance with this Section 20 (CONFIDENTIAL INFORMATION) with respect to all or part of such requirement; provided, further, that the Recipient shall use all commercially reasonable efforts to cooperate with the Discloser in attempting to obtain any protective relief that such Discloser chooses to obtain as a result of such requirement.

20.5 Disclosure in Dispute Resolution. Either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, as long as, in the absence of an applicable protective order, the Discloser has been previously notified by the Recipient in time sufficient for the Recipient to undertake all lawful measures to avoid disclosing such information and for Discloser to have reasonable time to seek or negotiate a protective order before or with any applicable mediator, arbitrator, state or regulatory body or a court.

20.6 No Limitation. The Parties recognize that an individual end user may simultaneously seek to become or be a Customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use Customer specific information, including Customer Proprietary Network Information, lawfully obtained from Customers or sources other than the Discloser.

20.7 Survival. Unless a longer time is specified under Applicable Law, each Party's obligations to safeguard Confidential Information disclosed prior to the expiration or termination of this Agreement will survive such expiration or termination without renewal for a period of two (2) years from such expiration or termination.

20.8 No License. Except as otherwise specifically provided herein, no license is hereby granted under any patent, trademark, copyright, or other intellectual property right nor is any such license implied solely by virtue of the disclosure of any Confidential Information.

20.9 Prior Disclosures. Notwithstanding any other provision of this Agreement, if the Parties have not previously entered into a Confidentiality Agreement, then the Confidential Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement, and unless a longer time is specified under Applicable Law, each Party's obligation to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination for two (2) years.

20.10 Traffic Data. Any traffic or billing data provided by either Party to implement the terms of this Agreement shall be considered Confidential and shall be disclosed only to those persons who have a need to see the Confidential Information to implement the terms of this Agreement.

20.11 Regulatory Agency Disclosure. Notwithstanding any of the foregoing, either Party may disclose Confidential Information on a confidential basis to regulatory agencies upon request. A Party which is provided with a written request by a regulatory agency for Confidential Information shall provide prior written notice to the other Party of such request to permit the other Party to seek and receive appropriate protective orders from the regulatory agency.

20.12 Irreparable Harm. Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, without requirement of posting a bond and the Discloser shall be entitled to such equitable relief in the event that a Government Authority finds that the Recipient has breached or threatened to breach the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

## 21. DISCLAIMER OF WARRANTIES

21.1 EXCEPT AS PROVIDED IN SECTION 5 (INTERCONNECTION ARRANGEMENTS) HEREOF, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE, WITH RESPECT TO THE INTERCONNECTION ARRANGEMENTS OR SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY TO THIRD PARTIES WITH REGARD TO CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY.

## 22. DISPUTE RESOLUTION

22.1 Finality of Disputes. Except as otherwise specifically provided for in this Agreement, no claims will be brought for disputes arising from this Agreement more than twenty four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

22.2 Alternative to Litigation. Except as otherwise specifically provided for in this Agreement, the Parties desire to attempt to resolve all disputes arising out of this Agreement before resort to formal dispute litigation. Accordingly, as provided herein, the Parties agree to use the following Dispute Resolution procedure with respect to all controversies and claims arising out of, or relating to, this Agreement or its breach.

22.3 Commencing Dispute Resolution. Dispute Resolution shall commence upon the sending from one Party to the other of written notice of a controversy or claim arising out of, or relating to, this Agreement or its breach and stating with reasonable specificity the exact nature, time and terms of the dispute. No Party may pursue any claim unless such written notice has first been given to the other Party.

22.4 Informal Resolution of Disputes. When written notice has been given, as required by Section 22.3 (Commencing Dispute Resolution) hereof, each Party will appoint a knowledgeable, responsible senior business representative with authority (and not outside counsel) to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives, but the representatives shall use their best efforts to resolve the dispute within sixty (60) days of the original notice. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production, will be considered Confidential Information and will not be admissible in the arbitration described below or in any lawsuit, or regulatory action, for any reason or purpose, without the prior written concurrence of both Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

22.5 Formal Dispute Resolution. If the Parties are unable to resolve the dispute through the informal procedure described above in Section 22.4 (Informal Resolution of Disputes) hereof, then either Party may invoke the following formal Dispute Resolution procedures by submitting to the other Party a written demand for arbitration and obtaining the other Party's agreement to arbitrate the dispute. Unless agreed upon by the Parties, formal dispute resolution procedures described below, including arbitration or other

procedures as appropriate, may be invoked not earlier than sixty (60) days after the date of the letter initiating dispute resolution under Section 22.3 (Commencing Dispute Resolution). If both Parties do not agree to arbitration, then either Party may proceed with any remedy under law or equity.

**22.6 Arbitration.** Disputes subject to arbitration under the provisions of this Agreement will be submitted to a single, neutral arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association for telecommunications arbitrations or pursuant to such other provider of arbitration services or rules as the Parties may agree. For purposes of this Section, “neutral” shall mean that the arbitrator is not, and has not previously been, an employee, shareholder of more than 1% of the voting stock of a Party, officer, director, agent, consultant, or attorney for either Party. The Parties will agree prior to any arbitration where the arbitration will be held and such arbitration will be held in Dallas, Texas, the city listed on Appendix – Arbitration Location (Paging) for the State, or in another location as the Parties may otherwise agree. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitration of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing party’s actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement or Applicable Laws. The arbitrator shall be knowledgeable of telecommunications issues. The arbitrator shall permit written discovery. The times specified in this Section 22.6 (Arbitration) may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys’ fees. The Parties will equally split the fees of the arbitration and the arbitrator. The Parties will agree prior to any arbitration whether decisions of the arbitrator under this section are to be considered (i) final and non-appealable, or (ii) appealable to a court of law.

**22.7 Billing Disputes.** When a billing dispute is resolved, the following will occur within thirty (30) days:

22.7.1 Any amounts paid by a Party in excess of the amount found to be owed by such Party will be reimbursed by the receiving Party, along with simple interest, at a rate agreed to by the Parties or as established by the arbitrator, on such amounts.

22.7.2 Any amounts not paid by a Party but found to be due will be paid to the other Party, along with simple interest, at rates agreed to by the Parties or as established by the arbitrator, on such amounts.

22.7.3 The billing party will make appropriate adjustments to its records to reflect the amounts that should have been charged in accordance with the findings of the dispute resolution.

**22.8 No Conflict.** The Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or any Governmental Authority with regard to procedures for the resolution of disputes arising out of this Agreement.

## **23. EFFECTIVE DATE**

23.1 This Agreement shall become effective in each State upon approval by the Commission.

## **24. FORCE MAJEURE**

**24.1 No Default.** Neither Party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its fault or negligence (collectively and individually “Force Majeure Event”), including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work

stoppages, third party equipment failure, cable cuts caused by third parties, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, complete inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation and common carriers to the extent, but only to the extent that, such acts or omissions relate to, or preclude the performance of, a Parties' obligations hereunder.

24.2 Remedies. If a delay or failure in the performance of a Party's obligations results from any Force Majeure Event, the Party injured by the other Party's inability to perform may, in accordance with Section 44 (TERM AND TERMINATION) hereof, elect to (a) terminate this Agreement, provided the condition has existed for ninety (90) days in a one hundred and twenty (120) day period; or (b) suspend this Agreement for the duration of the Force Majeure Event and resume performance under this Agreement once such Force Majeure Event ceases.

24.3 Day-to-Day Excusal. In the event that a delay or failure in the performance of a Party's obligations results from any Force Majeure Event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

## 25. GOVERNING LAW

25.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by, and construed in accordance with, the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the State in which the Interconnection Arrangements and/or services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles; provided, however, that in the event that federal law would apply more than one state's law to the same issue in dispute, Texas state law shall apply to such issue, without regard to Texas' conflicts of laws principles.

## 26. HEADINGS

26.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

## 27. INDEMNITY

27.1 No Assumption of Liability. Solely by virtue of entering into this Agreement, neither Party assumes any liability for any act or omission of the other Party or third parties in the furnishing of the Interconnection Arrangements, exchange of traffic hereunder, or in the provision of service to its Customers.

27.2 Indemnity for Third Party Claims. To the extent not prohibited by law or expressly inconsistent with the other terms of this Agreement, each Party ("Indemnifying Party") shall indemnify, defend, and hold the other Party ("Indemnified Party") harmless against any losses, costs (including, but not limited to, reasonable attorneys fees and costs at trial and on appeal, if any), claims, demands, injuries, damages, judgments, penalties, fines, forfeitures, or liabilities (collectively and individually "Claims") relating to any third-party Claims, regardless of the form or action, whether in contract, tort (including negligence), strict liability, or otherwise, including, but not limited to, those based on breach of contract, tort, libel, slander and invasion of privacy, to the extent arising out of the acts or active omissions of the Indemnifying Party, or its employees, officers, directors, subcontractors, or agents (while in the course and scope of their employment) in connection with (a) the Indemnifying Party's performance or nonperformance of its obligations under this Agreement, (b) the violation of, or failure to comply with, any Applicable Law, (c) the actual or alleged infringement of any patent, trademark, copyright, service mark, tradename, trade secret or intellectual property right, now known or later developed, supplied or used by the Indemnifying Party in the performance of its obligations under this Agreement, except as may be limited by Section 27.3

(Third Party Intellectual Property Rights) hereof, (d) the actual or alleged breach by the Indemnifying Party of another agreement, and (e) the Indemnifying Party's use of services or functions provided under this Agreement, (f) any and all Claims made by the Indemnifying Party's Customers against the Indemnified Party regardless of whether the underlying service was provided by the Indemnified Party, and (g) Telco's provision of 911 or E911 Service hereunder or out of Carrier's Customers' use of the 911 or E911 Service, whether suffered, made, instituted or asserted by Carrier or its Customers or by any other parties or persons. Each Party expressly agrees that it shall have no obligation to defend, indemnify, or hold the other Party harmless for the acts or omissions, or passive or active negligence, of third parties or the other Party. Each Party shall reimburse the other Party for any losses or damages through theft of Facilities, Interconnection Arrangements, or services, by or through employees, officers, directors, or agents of the reimbursing Party while on the premises of the other Party.

27.3 Third Party Intellectual Property Rights. Each Party acknowledges that its right under this Agreement to Interconnection with the other Party's network may be subject to, or limited by, intellectual property rights (including, without limitation, patent, copyright, and trade secret rights) and contract rights of third parties ("Intellectual Property Rights"). Subject to each Party's obligations under any FCC and/or Commission decisions, it is the sole obligation of each Party to obtain any consents, authorizations, or licenses under Intellectual Property Rights held by third parties that may be necessary for such Party for Interconnection as provided under this Agreement. Neither Party conveys any licenses to use such Intellectual Property Rights and makes no warranties, express or implied, concerning the other Party's (or any third party's) rights with respect to such Intellectual Property Rights, including, without limitation, whether such rights will be violated by such Interconnection Arrangements or by such other Party's use of other functions, Interconnection Arrangements, Facilities, products or services furnished under this Agreement. Subject to each Party's obligations under any FCC and/or Commission decisions and except as expressly stated in this Agreement, a Party does not and shall not indemnify or defend, nor assume any responsibility for, indemnifying or defending, or holding the other Party harmless, for any Claims for actual or alleged infringement of any Intellectual Property Right that arises out of, is caused by, or relates to such other Party's Interconnection with a Party's network or a Party's use of other functions, Interconnection Arrangements, Facilities, products or services furnished under this Agreement.

27.4 Notice of Claims.

27.4.1 The Indemnified Party shall notify the Indemnifying Party promptly, in writing, of any Claims, legal proceedings, or demands for which the other Party is responsible under this Section 27 (INDEMNITY) and shall cooperate in every reasonable way to facilitate the defense or settlement of such Claims with the Indemnifying Party paying all reasonable out of pocket expenses of the Indemnified Party; provided, however, that in all circumstances the Indemnified Party shall notify the Indemnifying Party in sufficient time to allow the Indemnifying Party to prepare and file a responsive pleading. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure materially prejudices the Indemnifying Party's ability to defend such Claims or results in a non-reversible default judgment. The Indemnifying Party shall promptly notify the Indemnified Party (but in no event later than five (5) days before a responsive pleading is due) in writing whether it accepts the defense of such Claims and the identity of Indemnifying Party's counsel. Until such time as the Indemnifying Party provides such written notice, the Indemnified Party will defend such Claims, at the expense of the Indemnifying Party.

27.4.2 The Indemnifying Party shall have sole control over the defense and settlement of any Claims tendered to it for defense and accepted by it; provided, however, that the Indemnifying Party shall not settle any Claims so as to impose liability on the Indemnified Party (including, but not limited to, an admission of liability or injunctive relief) without the Indemnified Party's express written consent (which consent may be withheld by the

Indemnified Party in its sole discretion); and provided, further, that the Indemnifying Party shall afford the Indemnified Party, at its sole cost and expense, an opportunity to participate on an equal basis with the Indemnifying Party in the defense or settlement of any Claims, at the Indemnified Party's own expense.

27.4.3 The Indemnifying Party shall not be liable under this Section 27 (INDEMNITY) for settlement by the Indemnified Party of any Claims, if the Indemnifying Party has not approved the settlement in advance, unless the Indemnifying Party has had the defense of the Claims tendered to it in writing, and has failed to assume such defense within five (5) days before a responsive pleading is due. In the event of such a failure to assume the defense, the Indemnifying Party shall be liable for any cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the express prior written approval of the Indemnifying Party, which consent may be withheld by the Indemnifying Party in its sole discretion.

27.4.4 The Parties shall cooperate with each other in the defense of any Claims by third parties against either or both of them arising out of, relating to, or in connection with, the Interconnection Arrangements and exchange of traffic hereunder including, without limitation, actions for (a) infringement of copyright and/or unauthorized use of program material, (b) libel, and/or (c) slander, based on the content of communications exchanged hereunder.

27.5 Employment laws. To the extent described below, each Party also agrees to indemnify, defend, and hold the other Party harmless from Claims that may be made by persons furnished by the Indemnifying Party, or by any of its subcontractors, under worker's compensation laws or similar statutes. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing of any Claims for which the Indemnified Party claims that the Indemnifying Party is responsible and to cooperate in every reasonable way, with the Indemnifying Party paying all reasonable out of pocket expenses of the Indemnified Party, to facilitate the defense or settlement of such Claims. The Indemnifying Party shall have complete control over defense of the case and the settlement or compromise thereof; provided, however, that the Indemnifying Party shall not settle any Claims so as to impose liability on the Indemnified Party (including, but not limited to, an admission of liability or injunctive relief) without the Indemnified Party's express written consent (which consent may be withheld by the Indemnified Party in its sole discretion); and provided, further, that the Indemnifying Party shall afford the Indemnified Party, at its sole cost and expense, an opportunity to participate on an equal basis with the Indemnifying Party in the defense or settlement of any Claims, at the Indemnified Party's own expense.

27.6 De minimis Claims. Neither Party shall be required to reimburse the other for any Claims or loss pursuant to this Section 27 (INDEMNITY) where the amount in controversy is less than two hundred and fifty dollars (\$250.00).

27.7 Activities at the Other Party's Premises. Each Party shall abide by and comply with all Applicable Laws and site rules relating to the Interconnection Arrangements, Facilities, and services provided hereunder on such other Party's premises, or activities (including those of its agents subcontractors and employees) performed, at or on the other Party's premises, and shall indemnify, defend, and hold the other Party harmless from any Claims solely resulting from, arising out of, or in connection with, the first Party's failure to comply with any of the foregoing.

27.8 Reimbursement for Damage. Each Party agrees to reimburse the other for damage to premises or damages or losses of equipment resulting from the installation, use, maintenance or removal of Facilities, services or Interconnection Arrangements if caused by active negligence or willful misconduct of the Indemnifying Party, or due to malfunction of equipment in the indemnifying Party's network.

## 28. INTERPRETATION

28.1 Tariff Rates. Wherever a tariffed rate is cited or quoted, it is understood that said cite incorporates any changes to such tariffs that becomes fully effective under the Applicable Laws.

28.2 Application By State. This Agreement may be negotiated for more than one State, as listed on Appendix – State (Paging). However, this Agreement shall be applied separately and distinctly to the Parties' operations in each individual State.

28.3 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party as the author or drafter of this Agreement.

## 29. MOST FAVORABLE TERMS AND CONDITIONS.

29.1 Application. To the extent provided in Section 252(i) of the Act and related provisions of the FCC's rules and regulations, Telco shall make available to Carrier any interconnection, service, or network element provided under an agreement approved under Section 252 of the Act to which Telco is a Party upon the same terms and conditions as those provided in that agreement.

29.2 Interrelationship. This Agreement, and every individual Interconnection, service, and network element arrangement provided hereunder, is subject to all rates, terms and conditions contained in this Agreement that are legitimately related to such Interconnection, service, or network element arrangement; and all such rates, terms and conditions are incorporated by reference herein and as part of every Interconnection, service, and network element arrangement provided hereunder. Without limiting the general applicability of the foregoing, the Term and Termination provisions of this Agreement are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection service and network element provided hereunder.

## 30. INTERVENING LAW

30.1 Change in Applicable Law. In the event that any of the rates, terms and/or conditions herein, or any of the Applicable Laws that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any Governmental Authority after the date this Agreement is duly executed by both Parties and are final and appealable, including, but not limited to, any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999), and assuming the Parties agree, the affected provision shall, as of the effective date of the action resulting in such invalidation, modification or stay, be invalidated, modified, or stayed, consistent with the action of the Governmental Authority upon the written request of either Party. Should the Parties be unable to agree within a reasonable time upon the effect of such invalidation, modification or stay on their interconnection arrangement, the Parties will continue to apply the original rate, term and/or condition. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Upon determination of the appropriate conforming modifications, such modifications shall be applied as of the effective date of the action resulting in such invalidation, modification or stay.

30.2 Appeals. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, on November 5,

1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), portions of which become effective thirty (30) days following publication of such Order in the Federal Register and other portions of which become effective 120 days following publication of such Order in the Federal Register. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its rights under this Intervening Law paragraph.

### **31. LAW ENFORCEMENT AND CIVIL PROCESS**

31.1 Intercept Devices. Local and federal law enforcement agencies periodically request information or assistance from Telecommunications Service providers. When either Party receives a request associated with a Customer of the other Party, it shall refer such request to the Party that serves such Customer, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

31.2 Subpoenas. If a Party receives a subpoena for information concerning an end user the Party knows to be a Customer of the other Party, it shall return the subpoena to the requesting party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the Customer's service provider, in which case that Party will respond to any valid request.

31.3 Cooperation. The Parties will cooperate to comply with any request for information or assistance from law enforcement agencies; provided, however, that neither Party shall be held liable for any claims or damages arising from compliance with such requests relating to the other Party's Customers and the Party serving such Customer agrees to indemnify and hold the other Party harmless against any and all such claims subject to Section 27 (INDEMNITY) of this Agreement.

### **32. LIMITATION OF LIABILITY**

32.1 Limitation of Liability. Except (i) for the indemnity obligations provided for herein, (ii) as otherwise provided in specific appendices under this Agreement, and (iii) to the extent (if at all) prohibited by law or public policy of such State where damages, liabilities or claims arise, each Party's liability to the other Party for any loss, damage, claim, or liability relating to, arising out of, or in connection with such Party's performance under this Agreement, including, but not limited to, any negligent act or omission (whether willful or inadvertent, passive or active), whether in contract, tort (including negligence) or otherwise, including, but not limited to, alleged breaches of this Agreement, shall not exceed in total the amount that Party has charged or would have charged to the other Party for the affected service(s) or function(s) which were not performed or were improperly performed.

32.2 Apportionment of Fault. Except (i) for losses, damages, liabilities, or claims alleged or claimed by a Customer of either Party and (ii) as otherwise provided in specific appendices of this Agreement, in the case of any loss, damage, liability or claim alleged or claimed by a third party arising out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this Section shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

32.3 No Consequential Damages. Except to the extent (if at all) prohibited by the law or public policy of a state where damages, liabilities or claims arise, neither Carrier nor Telco shall be liable to the other Party for any indirect, incidental, consequential, reliance, special or punitive damages suffered by the other Party (including, without limitation, damages for harm to business, loss of anticipated revenues, savings, or profits, or other economic loss suffered by such other Party), regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including, without limitation, negligence of any kind, whether active or passive (and including alleged breaches of this Agreement), and regardless of whether the Parties knew or had been advised of the possibility that such damages, liabilities, or claims could result in connection with or arising from anything said, omitted, or done hereunder or related hereto including



willful acts or omissions (collectively, "Consequential Damages"); provided, however, that the foregoing shall not limit (i) a Party's obligation under this Agreement to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, forfeitures, criminal or civil judgments or settlements, expenses (including attorney's fees) and Consequential Damages of such third party, and (ii) a Party's liability to the other Party for willful or intentional misconduct, including gross negligence. Except as provided in the prior sentences, each Party hereby releases and holds harmless the other Party (and such other Party's Affiliates, and their respective officers, directors, employees and agents) from any such claim.

32.4 No Assumption of Liability. Neither Party assumes any liability for any act or omission of the other in the furnishing of its service to its Customers solely by virtue of entering into this Agreement.

32.5 No Exemption. This Section 32 (LIMITATION OF LIABILITY) is not intended to exempt any Party from liability under this Agreement, but only to set forth the scope of damages that are recoverable.

32.6 Connecting Lines. When the lines, facilities, interconnection arrangements, or services of other companies and Telecommunications Carriers are used in establishing connections to and/or from points not reached by a Party's lines, neither Party shall be liable for any act or omission of the other companies or Telecommunications Carriers.

### 33. MULTIPLE COUNTERPARTS

33.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but such counterparts together constitute one and the same document.

### 34. NETWORK MANAGEMENT

34.1 Protective Traffic Management. Any Party may use or request protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic to or from each other's network, when required to protect its network from congestion due to Interconnection Arrangement failures, switch congestion, or failure or focused overload. The Parties will immediately notify each other of any protective control action planned or executed.

34.2 Traffic Reroutes. Where the capability exists, originating or terminating traffic reroutes may be implemented by any Party to temporarily relieve network congestion due to Interconnection Arrangement failures or abnormal calling patterns. Reroutes will not be used to circumvent normal trunk servicing. Expansive controls will only be used when the Parties mutually agree.

34.3 Temporary Call Volumes. The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, in order to prevent or mitigate the impact of these events on the public switched network.

34.4 Cooperation on Interference. Both Parties shall work cooperatively to prevent use of any Interconnection Arrangement or service provided under this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other Telecommunications Carriers or to either Party's Customers, causes electrical hazards to either Party's personnel, damage to either Party's equipment, or malfunction of either Party's billing equipment. At the earliest practicable time, each Party will provide the other verbal notice of any such network harm that could effect the other Party, its network, or its Customers.

34.5 High Volume Customers. The Parties shall cooperate to establish separate, dedicated Interconnection Trunks for the completion of calls to high volume Customers.

34.6 Cooperation. Carrier and Telco will work cooperatively to install and maintain a reliable network.

34.7 Call Flow. The Parties will provide supervisory tones or voice intercept recorded announcements to the calling party on all calls, consistent with standard telephone industry practices applicable to the signaling method used by the Parties.

## **35. REGULAR MEETING.**

35.1 The Parties recognize that they share a goal of ensuring that their Customers receive the highest quality and most reliable service. To help achieve this goal, the Parties agree to meet every six (6) months, at the request of the other, to discuss procedures under this Agreement, and planned changes or enhancements of the Parties' respective networks.

## **36. NOTICES**

36.1 Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally; on the date (other than trouble reports and notices of interruption which may be oral followed up in writing) receipt is acknowledged in writing by the recipient if delivered by regular mail; or on the date stated on the receipt if delivered by any method of delivery resulting in a written receipt being provided by the recipient. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission as reflected in the facsimile confirmation sheet. "Business Day" shall mean Monday through Friday, the Parties' respective holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this Section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this Section, except that notices to a Party's twenty-four (24) hour contact number shall be by telephone and/or facsimile and shall be deemed to have been received on the date transmitted.

To Carrier:

Ken Goldstein  
Senior Vice President  
6677 Richmond Highway  
Alexandria, VA 22306  
Tel #: 703-660-6677 ext. 6360  
Fax #: 703-765-1702  
e-mail: Ken.goldstein@metrocall.com

To Telco:

Contract Administration  
Attn: Notices Manager  
311 S. Akard St., 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398  
Tel #: 214-464-1933  
Fax #: 214-464-2006

36.2 Each Party agrees to inform the other of any name change or change in its legal status in writing within thirty (30) days after the effective date of such change.

36.3 Accessible Letters. Telco will communicate official information to Carrier via Telco's electronic mail ("e-mail") Accessible Letter notification process. Accessible Letters will be sent via e-mail to the e-mail address set forth above in Section 36.1, or to such other e-mail address as is provided to Telco in writing. Accessible Letter notification via e-mail will be deemed given as of the earlier of the date of actual receipt and the date set forth on the e-mail receipt.

## **37. PATENTS, TRADEMARKS & TRADE NAMES**

37.1 Indemnity. Subject to Section 27.3 (Third Party Intellectual Property Rights) hereof, with respect to claims of patent infringement made by third persons, Telco and Carrier shall defend, indemnify, protect and save harmless the other Party from and against all claims, liabilities, or damages arising out of the

improper combining with or use by the indemnifying Party of any Facility, apparatus, Interconnection Arrangement, system or method provided by that Party or its subscribers in connection with the Interconnection Arrangements furnished under this Agreement, except as may be implied by the Act or rules and regulations promulgated thereunder.

37.2 No License. No license under patents is granted by either Party to the other, or shall be implied or arise by estoppel with respect to any Facility, apparatus, system, or method used by either Party in connection with any Interconnection Arrangements furnished under this Agreement, except as may be implied by the Act or rules and regulations promulgated thereunder.

37.3 No Authority. Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent prior written consent of the other Party.

## **38. PUBLICITY**

38.1 Advertising. The Parties agree not to use in any advertising or sales promotion, press release or other publicity matter, any endorsement, direct or indirect quote, or picture implying endorsement by the other Party or any of its officers, directors, employees, or agents without such Party's prior written approval. The Parties will submit to each other for written approval, and obtain such approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.

38.2 Service Offerings. Neither Party will offer any services furnished hereunder using the trademarks, service marks, trade names, brand names, logos, insignia, or symbols legally protected of the other Party or its Affiliates without the other Party's written authorization.

## **39. RECORDS**

39.1 Adequacy. Each Party will keep adequate records of its operations and transactions under this Agreement and shall furnish to the other Party such information as may be reasonably required for the administration of this Agreement. Records required under this Agreement are subject to the confidentiality provisions of Section 20 (CONFIDENTIAL INFORMATION) of this Agreement.

39.2 Furnishment of Licenses. The Parties shall, upon reasonable request, furnish copies or otherwise make available to each other the licenses and other Federal and, if applicable, State regulatory authorizations and its filed tariffs or other published schedules of charges pertaining to this Agreement. In the event that Carrier possesses requisite authority, but the regulatory agency involved has not issued a formal document of authorization, Telco shall accept, as satisfying the requirements of this provision, the notice granting authorization in the agency's official publication(s).

## **40. RELATIONSHIP OF THE PARTIES**

40.1 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any rights in any third parties.

40.2 No Joint Venture. Neither Party is a legal representative or agent of the other Party, nor does either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party, or to assume any responsibility for the management of the other Party's business, unless otherwise expressly permitted by such other Party or in this Agreement.

40.3 Independent Contractor. Each Party is an independent contractor, and has, and hereby retains, the right to exercise full and unfettered control of, and supervision over, the performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to the payment of such employees, including, but not

limited to, the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters regarding its employees. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

40.4 Sole Responsibility. Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.

#### **41. REMEDIES**

41.1 Except as otherwise provided in this Agreement, no remedy set forth herein is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

#### **42. SURVIVAL OF OBLIGATIONS**

42.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, limitations on liability, and any other provisions of this Agreement which, by terms, sense, or context, are intended to survive (or to be performed after) the expiration or termination of this Agreement, will survive expiration or termination thereof, except that the survival of obligations as to protection of Confidential Information shall be governed by Section 20 (CONFIDENTIAL INFORMATION) hereof.

#### **43. TAXES**

43.1 Each Party purchasing Interconnection Arrangements, resale services, network elements, functions, Facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection Arrangements, resale services, network elements, functions, Facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either Party's corporate existence, status, or income, or (b) any corporate franchise Taxes, (c) Taxes which are imposed directly on a Party's gross or retail revenues other than Taxes imposed on the providing Party that arise from the purchasing Party's use of Interconnection Arrangements, resale services, network elements, functions, Facilities, products and services purchased under this Agreement, or (d) any municipal Tax which is not permitted under Telco's state tariff or Applicable Law to be imposed on or collected from the purchasing Party or which is not imposed on or collected from all similarly situated purchasing parties by such Party. Taxes shall be billed as a separate item on the invoice.

43.2 If any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, with respect to any purchase of Facilities, Interconnection Arrangements, resale services, network elements, functions, products and services hereunder, then: (i) the providing Party shall bill the purchasing Party for such Tax no later than four (4) years after the Tax was otherwise due or required to be paid to the taxing authority imposing the Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Nothing contained herein shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (i) it bills the purchasing Party for such Tax; or (ii) it collects the Tax from the purchasing Party. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax when billed as provided herein.

43.3 With respect to any purchase hereunder of Facilities, Interconnection Arrangements, resale services, network elements, functions, products and services hereunder that are resold to a third party, if any Tax is imposed by Applicable Law on the Customer in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the Customer; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result

of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

43.4 If the purchasing Party fails to impose and/or collect any Tax from Customers as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from Customers, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such taxing authority.

43.5 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

43.6 To the extent a sale is claimed to be for resale and thus subject to a resale Tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the taxing jurisdiction providing said resale tax exemption. Failure to timely provide such resale tax exemption certificate will result in no exemption being available to the purchasing Party prior to the date the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Facilities, Interconnection Arrangements, resale services, network elements, functions, products and services provided under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer or senior manager of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.

43.7 With respect to any Tax or Tax controversy covered by this Section 43 (TAXES), the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law, and at its own expense, any Tax that it is ultimately obligated to pay or collect; provided, however, that the purchasing Party will not permit any lien to exist on any asset of the providing Party by reason of such contest. The purchasing Party will be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest provided that all costs and expenses, including reasonable attorneys fees, incurred by the providing Party as a result of such cooperation in obtaining a refund or credit for the purchasing Party shall be paid by the purchasing Party.

43.8 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 43 (Taxes) shall be sent in accordance with Section 36 (NOTICES) hereof.

43.9 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.

#### **44. TERM AND TERMINATION**

44.1 Initial Term. Except as otherwise provided herein, the Parties agree to interconnect pursuant to the terms defined in this Agreement until December 15, 2002 (The period from the Effective Date until this date is the "Initial Term"). Thereafter the Agreement shall continue in effect in each State until terminated as provided herein.

44.2 Negotiations. At any time after a date 120 days prior to the date stated in Section 44.1 (Initial Term) hereof, either Party may request negotiations between the Parties for a new Interconnection agreement. Such negotiations shall begin within thirty (30) days after delivery of such a request. Any resultant new Interconnection agreement shall be effective when approved by the Commission or upon such other date as is agreed to by the Parties in the agreement itself.

44.3 Continuation of Agreement. This Agreement shall continue in effect until:

44.3.1 a regulatory or judicial body approves a new negotiated Interconnection agreement between the Parties for any State covered by this Agreement;

44.3.2 an arbitrated new Interconnection agreement between the Parties for any State covered by this Agreement becomes effective; or

44.3.3 this Agreement is terminated in accordance with the terms of this Section 44 (TERM AND TERMINATION).

44.4 Application of 252. The Parties agree that, except as otherwise provided in this Agreement, the rules and timeframes of Section 252 of the Act shall apply to any request for a new Interconnection agreement initiated under Section 44.2 (Negotiations) hereof. This includes arbitration by the Commission in the timeframes established in Section 252 of the Act.

44.4.1 If, for any reason, the Commission declines to arbitrate issues resulting from the negotiations, either Party may petition the FCC to arbitrate such issues.

44.4.2 If, for any reason, the FCC declines to arbitrate issues resulting from the negotiations, either Party may request binding commercial arbitration, conducted in accordance with Section 22.6 (Arbitration) hereof.

44.5 Mutual Termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time as mutually agreed upon by the Parties in writing.

44.6 Carrier Cessation of Services. Notwithstanding any other provision of this Agreement, in the event Carrier intends to cease providing its Authorized Services, Carrier shall communicate this intent to Telco in writing at least sixty (60) days prior to the time Carrier intends to cease providing its Authorized Services. If Carrier sends such a communication, Carrier may terminate this Agreement as part of that same advance written notice, subject to payment for Interconnection Arrangements provided or for costs incurred.

44.7 Breach. If a Party materially breaches a material provision of this Agreement:

44.7.1 Either Party may provide prior written notice to the other Party of such material breach of a material provision of this Agreement.

44.7.2 If such material breach has continued uncured for thirty (30) days following receipt of such written notice by the defaulting Party, the other Party may terminate this Agreement. Such termination shall be effective in thirty (30) days after receipt of such termination notice.

44.7.3 The terminating Party shall notify the FCC and the Commission and concurrently give the other Party written notice of the prospective date and time of discontinuance of service.

**44.8 Immediate Termination for Loss of Authority.**

44.8.1 This Agreement shall immediately terminate upon the permanent suspension, revocation, or termination by final order or by other means of either Party's authority to provide services over its network and shall be suspended during periods of temporary suspension, revocation, or termination of such authority.

44.8.2 Notwithstanding such termination, the terminating Party shall notify in writing the Party who has lost its authority to provide its services, not less than thirty (30) days prior to discontinuing the Interconnection Arrangements provided hereunder.

44.9 **Notice.** The terminating Party will also notify in writing the FCC and the Commission of the prospective discontinuance. Upon termination of this Agreement, the monthly charges payable under the Agreement shall be prorated to the date of termination, provided that the Interconnection Arrangement for which such charge is levied has been in service for more than one (1) month. Otherwise, the full monthly charge shall be due on termination, together with any applicable non-recurring charges.

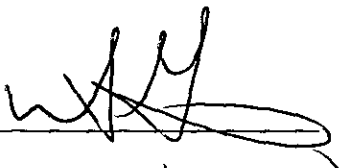
**Continuation of Interconnection Arrangements.** If this Agreement is terminated for any reason and the Parties continue to provide Interconnection Arrangements and services hereunder, then the rates, terms and conditions under which those services are provided will be those contained in pertinent Telco tariffs, or in the absence of any pertinent tariffs for the provision of services to CMRS providers, then the terms and conditions contained herein, unless otherwise agreed.

**45. POLES, DUCTS, CONDUITS AND RIGHTS OF WAY.**

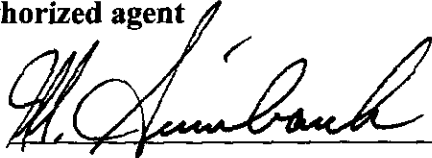
45.1 Telco shall provide Carrier access to poles, ducts, conduits and rights of way it owns or controls on rates, terms and conditions consistent with Section 224 of the Act and the FCC's Rules.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

**Metrocall, Inc.**

By:   
Printed: KENNETH GOLDSTEIN  
Title: SA VP WA  
Date: 9/26/02

**Southwestern Bell Telephone, L.P. d/b/a  
Southwestern Bell Telephone Company  
Nevada Bell Telephone Company d/b/a  
SBC Nevada Telephone Company  
By SBC Telecommunications, Inc., its  
authorized agent**

By:   
Printed: Mike Auinbaub  
for Title: President-Industry Markets  
Date: 10-17-02



## **Appendix – State (Paging)**

Nevada – Nevada Bell and Metrocall, Inc. (“CLEC”)

Missouri – SWBT and CLEC

Kansas – SWBT and CLEC

## **Appendix – Arbitration Location (Paging)**

Arkansas:	Little Rock
California:	San Francisco
Connecticut:	New Haven
Illinois:	Chicago
Indiana:	Indianapolis
Kansas:	Kansas City
Michigan:	Detroit
Missouri:	St. Louis
Nevada:	Reno
Ohio:	Cleveland
Oklahoma:	Oklahoma City
Texas:	Dallas
Wisconsin:	Milwaukee

## Appendix – Pricing (Paging)

### MISSOURI

1. The rates for transport and termination shall be as follows.

- 1.1 Carrier to Telco Reciprocal Compensation Rates Per Minute of Use

Type 2A	Type 2B	Type 1	Transiting
\$.009	\$.004	\$.009	\$.003

- 1.2 Telco to Carrier Reciprocal Compensation Rates

\$0.0005 per paging call

- 1.3 The Parties agree to compensate each other for the transport and termination of Local Calls delivered to the other Party at the rates set forth in Section 1.1 and 1.2 of this Appendix – Pricing (Paging) (“Default Rates”). Notwithstanding the foregoing, should Carrier submit to Telco State specific network engineering information together with a confidential forward-looking, long run incremental cost study performed by Carrier and Carrier’s cost experts, the Parties shall negotiate in good faith new compensation rates for the transport and termination of Local Calls exchanged hereunder using such State specific network engineering information, confidential forward-looking, long run incremental cost study, and other information otherwise known to the Parties; provided, however, that Telco shall not be obligated to negotiate a new compensation rate for the transport and termination of Local Calls more than once during the period of time from the execution of this Agreement by duly authorized representatives of both Parties through the Initial Term hereof and not more than once every twenty-four (24) months thereafter. Any new compensation rate for the transport and termination of Local Calls will be based specifically upon the specific network architecture, network equipment, and other costs of both Parties’ networks, as reflected in the information provided by Carrier to Telco, as well as other transport and termination cost information otherwise known to Telco. If such cost study and other information is submitted in complete and appropriate form (determined in good faith) within ninety (90) days after the date this Agreement is executed by duly authorized representatives of both Parties and the Parties can mutually agree on a new compensation rate for transport and termination of Local Calls, such new compensation rates will replace the Default Rate stated above as of the date such information was provided to the other Party, but no earlier than the Effective Date; otherwise, the new Carrier-specific compensation rate will be effective on the date such information was provided in complete and appropriate form (determined in good faith) to the other Party. The Parties agree to amend this Agreement to include any such new compensation rates for the transport and termination of Local Calls.

2. Carrier Facilities will be provided at the same rates, terms, and conditions that similar Facilities are provided by Telco.

3. Shared Facility

3.1 Shared Facility Factor – 25%

4. InterMTA Traffic

4.1.1 InterMTA Rates (to be paid to Telco by Carrier on applicable InterMTA calls) : \$.007969

5. Other Charges

5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	\$53.00	\$340.00

5.2 Cancellation Charge A charge is calculated as the product of the number of business days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

5.3 Rollover Charges A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover.

5.4 Charges for miscellaneous other items such as Change in Service Arrangement, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

## KANSAS

### 1. The rates for transport and termination shall be as follows.

#### 1.1 Carrier to Telco Reciprocal Compensation Rates Per Minute of Use

Type 2A	Type 2B	Type 1	Transiting
\$0.003673	\$0.001310	\$0.003673	\$0.002363

#### 1.2 Telco to Carrier Reciprocal Compensation Rates

\$0.0005 per paging call

#### 1.3 The Parties agree to compensate each other for the transport and termination of Local Calls delivered to the other Party at the rates set forth in Section 1.1 and 1.2 of this Appendix – Pricing (Paging) (“Default Rates”). Notwithstanding the foregoing, should Carrier submit to Telco State specific network engineering information together with a confidential forward-looking, long run incremental cost study performed by Carrier and Carrier’s cost experts, the Parties shall negotiate in good faith new compensation rates for the transport and termination of Local Calls exchanged hereunder using such State specific network engineering information, confidential forward-looking, long run incremental cost study, and other information otherwise known to the Parties; provided, however, that Telco shall not be obligated to negotiate a new compensation rate for the transport and termination of Local Calls more than once during the period of time from the execution of this Agreement by duly authorized representatives of both Parties through the Initial Term hereof and not more than once every twenty-four (24) months thereafter. Any new compensation rate for the transport and termination of Local Calls will be based specifically upon the specific network architecture, network equipment, and other costs of both Parties’ networks, as reflected in the information provided by Carrier to Telco, as well as other transport and termination cost information otherwise known to Telco. If such cost study and other information is submitted in complete and appropriate form (determined in good faith) within ninety (90) days after the date this Agreement is executed by duly authorized representatives of both Parties and the Parties can mutually agree on a new compensation rate for transport and termination of Local Calls, such new compensation rates will replace the Default Rate stated above as of the date such information was provided to the other Party, but no earlier than the Effective Date; otherwise, the new Carrier-specific compensation rate will be effective on the date such information was provided in complete and appropriate form (determined in good faith) to the other Party. The Parties agree to amend this Agreement to include any such new compensation rates for the transport and termination of Local Calls.

### 2. Carrier Facilities will be provided at the same rates, terms, and conditions that similar Facilities are provided by Telco.

3. Shared Facility

3.1 Shared Facility Factor – 25%

4. InterMTA Traffic

4.1 InterMTA Rates (to be paid to Telco by Carrier on applicable InterMTA calls): \$.007969

5. Other Charges

5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	\$53.00	\$340.00

5.2 Cancellation Charge A charge is calculated as the product of the number of business days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

5.3 Rollover Charges A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. Conversion Charge A nonrecurring charge of \$100.00 per end office applies when changing a Type 1 service arrangement to a Type 2A, where re-translations are required.

5.4 Charges for miscellaneous other items such as Change in Service Arrangement, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

## NEVADA

### 1. The rates for transport and termination shall be as follows.

#### 1.1 Carrier to Telco Reciprocal Compensation Rates Per Minute of Use

Type 2A	Type 2B	Type 1	Transiting
\$0.0120	\$0.007	\$0.0120	\$0.006

#### 1.2 Carrier to Telco Reciprocal Compensation Rates

\$0.0005 per paging call

#### 1.3 The Parties agree to compensate each other for the transport and termination of Local Calls delivered to the other Party at the rates set forth in Sections 1.1 and 1.2 of this Appendix – Pricing (Paging) (“Default Rates”). Notwithstanding the foregoing, should Carrier submit to Telco State specific network engineering information together with a confidential forward-looking, long run incremental cost study performed by Carrier and Carrier’s cost experts, the Parties shall negotiate in good faith new compensation rates for the transport and termination of Local Calls exchanged hereunder using such State specific network engineering information, confidential forward-looking, long run incremental cost study, and other information otherwise known to the Parties; provided, however, that Telco shall not be obligated to negotiate a new compensation rate for the transport and termination of Local Calls more than once during the period of time from the execution of this Agreement by duly authorized representatives of both Parties through the Initial Term hereof and not more than once every twenty-four (24) months thereafter. Any new compensation rate for the transport and termination of Local Calls will be based specifically upon the specific network architecture, network equipment, and other costs of both Parties’ networks, as reflected in the information provided by Carrier to Telco, as well as other transport and termination cost information otherwise known to Telco. If such cost study and other information is submitted in complete and appropriate form (determined in good faith) within ninety (90) days after the date this Agreement is executed by duly authorized representatives of both Parties and the Parties can mutually agree on a new compensation rate for transport and termination of Local Calls, such new compensation rates will replace the Default Rate stated above as of the date such information was provided to the other Party, but no earlier than the Effective Date; otherwise, the new Carrier-specific compensation rate will be effective on the date such information was provided in complete and appropriate form (determined in good faith) to the other Party. The Parties agree to amend this Agreement to include any such new compensation rates for the transport and termination of Local Calls.

### 2. Carrier Facilities will be provided at the same rates, terms, and conditions that similar Facilities are provided by Telco.

3. Shared Facility

3.1 Shared Facility Factor – 25%.

4. InterMTA Traffic

4.1.1 InterMTA Rates (to be paid to Telco by Carrier on applicable InterMTA calls per Minute of Use): \$.013289

5. The rates for Type 2A and Type 2B trunk port elements are as follows per unit increment of 24 trunks (per DS-1 termination):

Monthly Recurring	Non-recurring
\$0.00	\$960.00

6. Other Charges

6.1 Charges for miscellaneous other items such as, but not limited to, Change in Service Arrangement, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

AMENDMENT  
TO THE INTERCONNECTION AGREEMENT  
BETWEEN

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SOUTHWESTERN BELL  
TELEPHONE COMPANY  
NEVADA BELL TELEPHONE COMPANY d/b/a SBC NEVADA BELL TELEPHONE  
COMPANY

AND  
METROCALL, INC.

WHEREAS, pursuant to Section 252(i) of the Federal Telecommunications Act of 1996 ("MFN request"), Metrocall, Inc ("Metrocall") issued its Adoption Letter dated August 26, 2002 seeking to adopt, within the states of Kansas, Missouri, and Nevada the provisions of the Interconnection Agreement between Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company ("SWBT")/Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company ("Nevada Bell") and Verizon Wireless Messaging Services, LLC and Yuma Arizona RSA L.P. ("Agreement"), and

WHEREAS, on April 18, 2001, the Federal Communications Commission (FCC) adopted its "Order on Remand and Report and Order" in its Intercarrier Compensation proceeding regarding traffic to Internet Service Providers (ISPs) (hereafter, the "ISP Intercarrier Compensation Order");<sup>1</sup> and

WHEREAS, the FCC in that Order suspended MFN requests affecting ISP and other Internet-bound traffic, stating in pertinent part:

*Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic[footnote omitted]. Section 252(i) applies only to*

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<sup>1</sup> In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic; CC Docket Nos. 96-98 and 99-68; FCC Order No. 01-131 (released April 27, 2001).



*agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this [Federal Communications] Commission pursuant to section 201 [footnote omitted].2; and*

WHEREAS the rates, terms and conditions for ISP traffic are legitimately-related to all other rates, terms and conditions for intercarrier compensation and thus are not eligible to be adopted by invoking MFN rights;

NOW, THEREFORE, SWBT/Nevada Bell and Metrocall agree to amend the Agreement with the following rates, terms and conditions for the duration of the underlying Agreement,

- I. The Agreement is hereby amended to add modified Reciprocal Compensation language, which is defined herein and shall supersede section 12 thru 12.2 of the underlying Agreement:

**12. COMPENSATION FOR LOCAL AUTHORIZED SERVICES INTERCONNECTION**

- 12.1 Compensation for Local Calls Transport and Termination. Subject to the limitations set forth herein, Telco shall compensate Carrier for the transport and termination of Local Calls originating on Telco's network and terminating on Carrier's network, and Carrier shall compensate Telco for the transport and termination of Local Calls originating on Carrier's network and terminating on Telco's network. The rates of each Party for such transport and termination of Local Calls are set forth in Appendix -Pricing (Paging). Compensation for Local Calls shall apply solely to the transport and termination of Local Calls, which shall not include, without limitation, the following:

- 12.1.1 Non-authorized Services traffic;
- 12.1.2 Traffic which does not consist of Local Calls, including but not limited to, interstate access roaming traffic;
- 12.1.3 Toll-Free Service calls (e.g. 800/888), Information Services Traffic, 500 and 700 calls;
- 12.1.4 InterMTA traffic;
- 12.1.5 Transit Traffic;
- 12.1.6 Any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission.

- 12.2 Internet Traffic. The Parties agree that Internet Traffic between them, if any, is presently *de minimis*. At such time as either Party can economically track and measure such Internet Traffic, such Party may remove such Internet Traffic from the calculation of reciprocal compensation between the Parties by providing to the

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2 ISP Intercarrier Compensation Order, para 82 (emphasis added).

other Party appropriate evidence of the existence of such Internet Traffic. Records will be retained of all such removed Internet Traffic. Upon the conclusion of FCC proceeding CC Docket No. 99-98, the compensation rate established in that proceeding applicable to Internet Traffic (or, if no such rate is established in that proceeding, a compensation rate otherwise established pursuant to the requirements of such proceeding) shall be applied retroactively to all removed traffic as described above.

- II. The Agreement is hereby amended to supersede the Agreement's Price Schedule with the Attached Price Schedule.
- III. On January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC*, et. al, 535 U.S. \_\_ (2002)). The Parties further acknowledge that on May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, No. 00-101, in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. December 9, 1999) ("the Line Sharing Order"), specifically vacated the Line Sharing Order, and remanded both these orders to the FCC for further consideration in accordance with the decision. In addition, on November 24, 1999, the FCC issued its Supplemental Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) and on June 2, 2000, its Supplemental Order Clarification, (FCC 00-183), in CC Docket 96-98. By executing this amendment, SWBT/Nevada Bell does not waive any of its rights, remedies or arguments with respect to any such decisions or proceedings and any remands thereof, including its right to seek legal review or a stay of such decisions and its rights contained in the Interconnection Agreement. SWBT/Nevada Bell further notes that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). By executing this Amendment and carrying out the intercarrier compensation rates, terms and conditions herein, SWBT/Nevada Bell does not waive any of its rights, and expressly reserves all of its rights, under the ISP Intercarrier Compensation Order, or any other regulatory, legislative or judicial action, including but not limited to its right to exercise its option at any time in the future to invoke the Intervening Law or Change of Law provisions and to adopt on a date specified by

SWBT/Nevada Bell the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

- IV. All other terms of the Agreement will remain the same.
- V. This Amendment is effective only for the term of the Agreement.
- VI. This Amendment shall be filed with and is subject to approval by the PUC.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the date shown below by their respective duly authorized representatives.

**Metrocall, Inc.**

**Southwestern Bell Telephone, L.P. d/b/a  
Southwestern Bell Telephone Company  
Nevada Bell Telephone Company d/b/a  
SBC Nevada Bell Telephone Company  
by SBC Telecommunications, Inc., its  
authorized agent  
By SBC Telecommunications, Inc.,  
Its authorized agent**

Signature: \_\_\_\_\_



Print Name: \_\_\_\_\_

KENNETH GOLDEN

Title: \_\_\_\_\_

SA VP MGR

Date Signed: \_\_\_\_\_

9/26/02

Signature: \_\_\_\_\_



Print Name: \_\_\_\_\_

Mike Auinbauh

Title: President - Industry Markets

Date Signed: \_\_\_\_\_

10-17-02

## CERTIFICATE OF SERVICE

I, Veronica Blakeney, an employee of Alston & Bird LLP, hereby certify that on this 23rd day of October, 2002, true and complete copies of the foregoing Application for Approval of Interconnection Agreement between Metrocall, Inc. and Southwestern Bell Telephone Company was served *via* overnight mail, United Parcel Service, on the following individuals:

Melvin Flowers  
Lead Negotiator  
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