# AMENDMENT TO THE AGREEMENT BETWEEN USA MOBILITY WIRELESS, INC. AND BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA AND AT&T TENNESSEE

This Amendment (the "Amendment") amends the Paging Agreement by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee ("**AT&T-9STATE**") (previously referred to as BellSouth Telecommunications, Inc.") and USA Mobility Wireless, Inc. ("CLEC"). **AT&T-9STATE** and CLEC are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment applies in AT&T's service territory in the State(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

**WHEREAS**, **AT&T-9 STATE** and CLEC are Parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), Effective December 15, 2005 and as subsequently amended (the "Agreement");

**NOW, THEREFORE**, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. **AT&T-9STATE** shall be defined as the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

2. The Parties agree to delete and replace in its entirety Section XXII. Notices with the following:

**XXII. Notices**

A. Subject to Section A.2, Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be pursuant to at least one of the following methods:

1. delivered personally, delivered by express delivery service or mailed via certified mail or first class U.S. Postal Service, with postage prepaid and a return receipt requested.

2. delivered by facsimile provided CLEC and/or **AT&T-9STATE** has provided such information in Section C below.

B. Notices will be deemed given as of the earliest of:

1. the date of actual receipt;

2. the next Business Day when sent via express delivery service;

3. five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or

4. on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

at&t

C. Notices will be addressed to the Parties as follows:

| NOTICE CONTACT | CLEC CONTACT |
|---|---|
| NAME/TITLE | Mark Burns<br>Sr Director Technology Administration |
| STREET ADDRESS | 3000 Technology Drive, Suite 400 |
| CITY, STATE, ZIP CODE | Plano, Texas 75074 |
| PHONE NUMBER* | (972) 801-0515 |
| FACSIMILE NUMBER | (866) 432-1857 |

| | AT&T CONTACT |
|---|---|
| NAME/TITLE | Contract Management<br>ATTN: Notices Manager |
| STREET ADDRESS | 311 S. Akard St. 9th floor<br>Four AT&T Plaza |
| CITY,STATE, ZIP CODE | Dallas, TX 75202-5398 |
| FACSIMILE NUMBER | (214) 464-2006 |

*Informational only and not to be considered as an official notice vehicle under this Section.

D. Either Party may unilaterally change its designated contact name, address, and/or facsimile number for the receipt of notices by giving written Notice to the other Party in compliance with this Section. Any Notice to change the designated contact name, address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

E. **AT&T-9STATE** communicates official information to CLECs via its Accessible Letter or other applicable notification processes. These processes involve electronic transmission and/or posting to the AT&T CLEC Online website, inclusive of a variety of subjects including changes on business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.

3. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

4. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

5. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.

6. This Amendment shall be filed with and is subject to approval by the applicable state Commission and shall become effective ten (10) days following approval by such Commission.

| USA Mobility Wireless, Inc. | BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA and AT&T TENNESSEE by AT&T Services, Inc., its authorized agent |
|---|---|
| Signature: Mark D Burns | Signature: Pat Doherty |
| Name: MARK D. BURNS (Print or Type) | Name: Patrick Doherty (Print or Type) |
| Title: SR. DIRECTOR TECHNOLOGY ADMIN. (Print or Type) | Title: Director - Regulatory (Print or Type) |
| Date: 11/5/2012 | Date: 11-7-12 |

CN:11022012-313

CN:11022012-313

**Amendment to the One-Way Paging Interconnection Agreement**
**Between**
**Metrocall, Inc. and**
**BellSouth Telecommunications, Inc.**
**d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia,**
**AT&T Kentucky, AT&T Louisiana, AT&T Mississippi,**
**AT&T North Carolina, AT&T South Carolina and AT&T Tennessee**
**Dated December 15, 2005**

This Amendment is entered into by and between Metrocall, Inc. and BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee ("AT&T") hereinafter referred to collectively as the "Parties," to amend that certain One-Way Paging Interconnection Agreement between the Parties dated December 15, 2005.

WHEREAS, Metrocall, Inc. has changed the name of said business to USA Mobility Wireless, Inc. a Delaware corporation and changed their contact information;

WHEREAS, the Parties desire that the One-Way Paging Interconnection Agreement be amended to reflect the correct corporate entity name and contact information; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The name of Metrocall, Inc. in the One-Way Paging Interconnection Agreement is hereby deleted throughout the Agreement and replaced with USA Mobility Wireless, Inc.

2. The Parties hereby agree to Amend Section XXII. of the Agreement to delete customer information and replace it with the following:

USA Mobility Wireless, Inc.
Mark Burns
Senior Director, Technical Administration
3000 Technology Drive
Suite 400
Plano, TX 75074
Phone: (972) 801-0515
Fax: (972) 801-1699
Email: mark.burns@usamobility.com

3. Except as modified herein, all of the other provisions of the One-Way Paging Interconnection Agreement, dated December 15, 2005, shall remain in full force and effect.

4. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.

5. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

6. This Amendment shall be filed with and is subject to approval by the Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee Commissions and shall become effective immediately upon approval by each such Commission in each Commission's respective state.

**USA Mobility Wireless, Inc.**

By: PL

Name: P. Gramoeros

Title: SVP Finance

Date: 5/20/09

**BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee, by AT&T Operations, Inc., their authorized agent**

By: [illegible]

Name: Eddie A. Reed, Jr.

Title: Director-Interconnection Agreements

Date: 6-5-09

| | Switch Based OCN |
|---|---|
| **ALABAMA** | 6630 |
| **FLORIDA** | 6630 |
| **GEORGIA** | 6630 |
| **KENTUCKY** | 6630 |
| **LOUISIANA** | 6630 |

| | Switch Based OCN |
|---|---|
| **MISSISSIPPI** | 6630 |
| **NORTH CAROLINA** | 6630 |
| **SOUTH CAROLINA** | 6630 |
| **TENNESSEE** | 6630 |

**ACNA** RHA


[CCCS Amendment 3 of 3]

**By and Between**

**BellSouth Telecommunications, Inc.**

**And**

**Metrocall, Inc.**

# INTERCONNECTION

# AGREEMENT

# BETWEEN

# BELLSOUTH TELECOMMUNICATIONS, INC.

# AND

# METROCALL, INC.

# TABLE OF CONTENTS


| Section | |
|---|---|
| | Definitions |
| I. | Purpose |
| II. | Term of the Agreement |
| III. | Compensation and Billing |
| IV. | Methods of Interconnection |
| V. | Access To Poles, Ducts, Conduits, and Rights of Way |
| VI. | Access to Telephone Numbers |
| VII. | Network Design and Management |
| VIII. | Liability and Indemnification |
| IX. | Intellectual Property Rights and Indemnification |
| X. | Modification of Agreement |
| XI. | Taxes and Fees |
| XII. | Treatment of Proprietary and Confidential Information |
| XIII. | Resolution of Disputes |
| XIV. | Limitation of Use |
| XV. | Waivers |
| XVI. | Assignment |
| XVII. | Severability |
| XVIII. | Survival |
| XIX. | Governing Law |
| XX. | Arm's Length Negotiations |
| XXI. | Filing of Agreement |
| XXII. | Notices |
| XXIII. | Headings of No Force or Effect |
| XXIV. | Multiple Counterparts |
| XXV. | Compliance With Applicable Law |
| XXVI | Entire Agreement |
| XXVII | Signature Page |

Attachments

| | |
|---|---|
| B-1 | Rates |

# ONE-WAY PAGING INTERCONNECTION AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and, Metrocall, Inc. ("Carrier") a Deleware corporation and shall be deemed effective as of December 15, 2005 (the "Effective Date"). This Agreement may refer to either BellSouth or Carrier or both as a "party" or "parties."

## WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Carrier is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide one-way paging and/or narrowband Personal Communications Service (hereinafter "Paging Services") in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities for the purposes of fulfilling their obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Carrier agree as follows:

### Definitions

**A. Affiliate** is defined as a 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 paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**B. Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

**C. Local Traffic** is defined for purposes of this Agreement as any telephone call that originates on the network of BellSouth that is handed off to Carrier at a point of interconnection in the same Local Access and Transport Area ("LATA") in which the call originates. For purposes of this Agreement, LATA shall have the same definition as that contained in the Telecommunications Act of 1996.

**D. Local Interconnection** is defined for purposes of this Agreement as the delivery of Local Traffic to be terminated on Carrier's local network so that end users of BellSouth have the ability to reach end users of Carrier without the use of any access code or substantial delay in the processing of the call.

**E. Telecommunications Act of 1996 ("Act')** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

**F. Point of Interconnection (POI)** is defined as the physical geographic location(s), within BellSouth's service area within a LATA, at which the Parties terminate interconnection facilities for the origination and/or termination of traffic. This point establishes the technical interface, the test point(s), and the point(s) for operational division of responsibility between BellSouth's network and Carrier's network.

**G. Type 1 Interconnection** is a trunk side connection between a BellSouth end office and a Carrier's POI and provides the capability to access all BellSouth end offices within the LATA. Type 1 Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

**H. Type 2A Interconnection** are one-way or two-way facilities that provide a trunk side connection between a BellSouth tandem switch and a Carrier's POI and provides access to all BellSouth end offices and third party providers subtending the BellSouth tandem. Type 2A Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

**I. Type 2B Interconnection** are one-way or two-way facilities that provide a high usage route between a BellSouth end office and a Carrier's POI and provides access to all BellSouth NXX codes homed in that specific end office and is provided in conjunction with Type 2A Interconnection. Type 2B Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

## I. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251and 252. The access and interconnection obligations contained herein enable Carrier to provide Paging Services in those areas where it is authorized to provide such service within the nine state region of BellSouth. Carrier remains liable to BellSouth for payment for all services and facilities obtained from BellSouth prior to the Effective Date of this Agreement pursuant to the applicable tariff or contract provisions. Until otherwise ordered by the FCC, this Agreement does not provide for the access to Unbundled Network Elements.

## II. Term of the Agreement

**A.** The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

**B.** The Parties agree that by no earlier than one hundred and eighty (180) days prior to the expiration of this Agreement, either party may request negotiation of a successor agreement by written notice to the other Party. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in this Section B, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.

**C.** If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section B above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in the Subsequent Agreement.

**D.** Notwithstanding the foregoing, in the event that as of the date of expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section B above, then either Party may terminate this Agreement upon sixty (60) days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Carrier pursuant to the terms, conditions and rates set forth in BellSouth's General Subscriber Services

Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended from time to time. In the event that BellSouth terminates this Agreement and BellSouth provides services as stated above, the Parties may continue to negotiate a Subsequent Agreement, and the terms of such Subsequent Agreement shall be effective as of the date of execution.

## III. Compensation and Billing

### A. Compensation

1. The delivery of Local Traffic shall be one way from BellSouth to Carrier. The delivery of traffic on BellSouth's interLATA EAS routes shall be considered as Local Traffic. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

2. BellSouth will pay Carrier for terminating its Local Traffic on the Carrier's network the local interconnection rates as set forth in Attachment B-1. Charges for terminating traffic will be in accumulated conversation minutes, whole and partial, measured from receipt of answer supervision to receipt of disconnect supervision and rounded up to the next whole minute at the close of the billing period. If Carrier is unable to measure traffic in this manner, the charges from Carrier for traffic terminating to Carrier will be based upon actual usage determined by multiplying the actual number of pages per month times the facilities percentage referenced in Section IV Paragraph B (87%) times the average hold time per page, which is agreed to by the parties as fifteen (15) seconds per page, and rounding up to the next whole minute at the close of the billing period. The parties will share the recurring charges for certain transport facilities for Local Traffic as more fully set forth in Section IV of this Agreement. Carrier's share of charges for such local transport facilities are to be billed and paid pursuant to the terms and conditions of the applicable state tariff(s) from which such facilities are provided.

### B. Audits

Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties will retain records of call detail for a minimum of nine months.

### C. Billing Charges

1. The charges for Local Interconnection are to be billed monthly and payment for services provided is due on or before the next bill date.

2. Charges for terminating traffic will be the actual conversation minutes of use (MOUs) measured from receipt of answer supervision to receipt of disconnect supervision, with such time accumulated at the end of the billing period and rounded up to the next whole minute as defined in Section III.A.2 of this Agreement.

3. Billing disputes shall be handled pursuant to the terms of this section.

a. Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the terms of this Agreement.

b. For purposes of this Section, a billing dispute means a dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other amounts owed by the billed Party until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. Once the billing dispute is resolved, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.

c. If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by

the payment due date times the late factor. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.

4. Late payment charges shall be the lower of 1.5% per month or such other percent as specified by an appropriate state regulatory agency or required by law. For bills rendered by either Party for payment, the late payment charge for both Parties shall be applied any portion of the payment not received by the billing Party on or before the payment due date.

5. All charges under this Agreement shall be billed within one (1) year from the time the charge was incurred; previously unbilled charges more than one (1) year old shall not be billed by either Party.

6. Deposit Policy. When purchasing services from BellSouth, Carrier will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in its sole discretion, some other form of security. Any such security deposit shall in no way release Carrier from its obligation to make complete and timely payments of its bill. Such security shall be required prior to the inauguration of service. If, in the sole opinion of BellSouth, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security, BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC1) security interest in Carrier's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed two months' estimated billing. In the event Carrier fails to remit to BellSouth any deposit requested pursuant to this Section, service to Carrier may be terminated and any security deposits will be applied to Carrier's account(s).

**D.** If during the term of this agreement BellSouth has interconnection agreements with other Carriers containing usage rate(s) for Cellular/PCS/SMR which are different from the usage rate(s) in this agreement and 75% of the other Carriers' usage is subject to a different rate, the parties agree that either party shall have the right to modify the rates in Attachment B-1 to the then current usage rate contained in the Cellular/PCS/SMR interconnection agreements.

## IV. Methods of Interconnection

**A.** There are three appropriate methods of interconnecting facilities: (1) interconnection via purchase of facilities from either party by the other party; (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Type 1, Type 2A and Type 2B and other interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement subject, however, to the sharing of recurring charges for certain transport facilities for Local Traffic as more fully set forth in this section. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

**B.** The parties will accept and provide any of the preceding methods of interconnection. Connectivity shall be established to at least one BellSouth access tandem within every LATA Carrier desires to serve, or Carrier may elect to interconnect directly at an end office. In the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate tariff, as amended from time to time will apply. The parties acknowledge, however, that with respect to such facilities that run from BellSouth's tandem or end office to Carrier's first switch or terminal as the case may be, in the same LATA as the interconnected BellSouth tandem or end office, the applicable recurring charges for such facilities will be shared by the parties with BellSouth responsible for 87% of the facility charges and Carrier responsible for 13% of the facility charges, except that BellSouth shall only share the cost of the first twenty-five (25) miles of interoffice facilities, with Carrier responsible for all other interoffice facility charges. Sharing of recurring facilitiy charges shall apply to activated trunks only. Carrier shall be and remain solely responsible for all installation and other nonrecurring charges for such facilities.

**C.** The decision to activate facilities for which charges are shared will be made by the party responsible for the majority of the recurring charges for the facility. This decision will be based on traffic information from studies performed by BellSouth or, if BellSouth has not or will not perform such studies, by traffic information provided by Carrier. Recurring facility charges sharing will be at the DS1 level for transport facilities at the DS1 or higher level. If trunks have been activated in quantities exceeding the capacity of a full DS1, but not sufficient to fully occupy an additional DS1, sharing will be rounded up to the next DS1. Sharing of recurring facility charges for those carriers who subscribe to voice grade transport at less than the DS1 level will be based on actual facilities installed.

**D.** Nothing herein shall prevent Carrier from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that if Carrier orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge Carrier the lower of the interstate or intrastate tariffed rate or promotional rate.

**E.** When the parties provide an access service connection between an interexchange carrier ("IXC") and each other, each party will provide its own access services to the IXC. Each party will bill its own access services rates to the IXC.

**F.** The ordering and provision of all services purchased from BellSouth by Carrier shall be as set forth in the BellSouth Telecommunications Wireless Customer Guide as that guide is amended by BellSouth from time to time during the term of this Agreement.

## V. Access To Poles, Ducts, Conduits, and Rights of Way

BellSouth will provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth pursuant to 47 U.S.C § 224, as amended by the Act, pursuant to terms and conditions of a license agreement subsequently negotiated with BellSouth's Competitive Structure Provision Center.

## VI. Access to Telephone Numbers

Carrier is responsible for interfacing with the North American Numbering Plan administrator for all matters dealing with dedicated NXXs. BellSouth will cooperate with Carrier in the provision of shared NXXs where BellSouth is the service provider.

## VII. Network Design and Management

**A.** The parties agree to work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth agrees to provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

**B.** The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

**C.** The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls to alleviate or prevent network congestion.

1. Network Congestion - When BellSouth notifies carrier that capacity issues at any BellSouth tandem, including but not limited to port capacity and processing capacity, require Carrier to add interconnection facilities to additional BellSouth tandems or to BellSouth end offices, the Parties agree to joint planning sessions through which the Parties will develop mutually acceptable plan(s) to alleviate such tandem capacity problems. Such mutually agreed to plans may include BellSouth providing the necessary transport facilities past the tandem for Carrier to provide Type 2B interconnection and waving the charges for such facilities from the tandem to the end office provided however that Carrier agrees to compensate Bellsouth for the necessary interconnections facilities to the POI.

2. Tandem Traffic Volume – Where multiple BellSouth tandems exist within a LATA, and where either Party has the capability to measure the amount of traffic between Carrier's switch and an interconnected BellSouth tandem, then in the event that the amount of traffic delivered to end offices that sub-tend another specific BellSouth tandem in the same LATA exceeds two DS1's (624,000 minutes of use) level of traffic per month for two consecutive month's, then Carrier shall install and retain interconnection trunks to such tandem, in addition to the existing BellSouth tandem interconnection(s).

3. End Office Traffic Volume – Where either Party has the capability to measure the amount of traffic between Carrier's switch and a specific BellSouth end office, in the event that the amount of traffic Carrier delivers to that end office exceeds one DS3's (6 million minutes of use) level of traffic per month for two consecutive months, then Carrier shall install and retain Type 2B interconnection trunks to such end office.

**D.** Interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, BellSouth intends to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk provided to Carrier.

**E.** The parties agree to provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording

capabilities. This exchange of information is required to enable each party to bill properly.

## VIII. Liability and Indemnification

**A.** EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT OR IN THIS SECTION VIII, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY THE OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.

**B.** Neither party shall be liable to the other for any act or omission of any other telecommunications company providing a portion of a service under this Agreement, nor shall either party hold liable any other telecommunications company providing a portion of a service under this Agreement for any act or omission of BellSouth or Carrier.

**C.** Neither party is liable for damages to the other party's terminal location, POI nor customer's premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, unless the damage is caused by a party's gross or willful negligence or intentional misconduct.

**D.** Each party shall be indemnified, defended and held harmless by the other party against any claim, loss or damage arising from the other party's acts or omissions under this Agreement, including without limitation: 1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the other party's own communications; 2) Claims for patent infringement arising from combining or using the service furnished by either party in connection with facilities or equipment furnished by either party or either party's customer; 3) any claim, loss, or damage claimed by a customer of either party arising from services provided by the other party under this Agreement; or 4) all other claims arising out of an act or omission of the other party in the course of using services provided pursuant to this Agreement. Each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorney's fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

**E.** A Party may, in its sole discretion, provide in its tariffs and contracts with its Customer and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to Customer or third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) Consequential Damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such Loss.

**F.** Neither BellSouth nor Carrier shall be liable for damages to the other's terminal location, POI or other company's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a company's negligence or willful misconduct or by a company's failure to properly ground a local loop after disconnection.

**G.** Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

**H.** The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any claim, loss or damage claimed by the customer of the Party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.

**I.** Notwithstanding any other provision of this Agreement, claims for damages by Carrier or Carrier's clients or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth shall not be subject to such limitation of liability.

**J.** Notwithstanding any other provision of this Agreement, claims for damages by BellSouth or any other person or entity resulting from the gross negligence or willful misconduct of Carrier shall not be subject to such limitation of liability.

**K.** Neither party assumes liability for the accuracy of the data provided to it by the other party.

**L.** No license under patents (other than the limited license to use) is granted by either party or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement.

**M.** Each party's failure to provide or maintain services offered pursuant to this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against them, acts of God and other circumstances beyond their reasonable control.

**N.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

**O.** The obligations of the parties contained within this section shall survive the expiration of this Agreement.

## IX. Intellectual Property Rights and Indemnification

**A.** No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

**B.** Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

**C.** Intellectual Property Remedies

1. Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section VIII, preceding.

2. Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

3. Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

4. Dispute Resolution. Any claim arising under Section IX.A and IX.B shall be excluded from the dispute resolution procedures set forth in Section XIII, and shall be brought in a court of competent jurisdiction.

## X. Modification of Agreement

**A.** Pursuant to 47 USC § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to Carrier any entire interconnection agreement filed and approved pursuant to 47 USC § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

**B.** If Carrier changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Carrier to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

**C.** No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

**D.** Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**E.** In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Carrier or BellSouth to perform any material terms of this Agreement, Carrier or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section XIII.

**F.** If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

## XI. Taxes and Fees

**A.** Definition. For purposes of this section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) which are imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor.

**B.** Taxes And Fees Imposed Directly On Either Providing Party Or Purchasing Party.

1. Taxes and fees imposed on the providing party, which are neither permitted nor required to be passed on by the providing party to its customer, shall be borne and paid by the providing party.

2. Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing party, shall be borne and paid by the purchasing party.

**C.** Taxes And Fees Imposed On Purchasing Party But Collected And Remitted By Providing Party.

1. Taxes and fees imposed on the purchasing party shall be borne by the purchasing party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party determines that in its opinion any such taxes or fees are not payable, the providing party shall not bill such taxes or fees to the purchasing party if the purchasing party provides written certification, reasonably satisfactory to the providing party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing party, the purchasing party shall have the right, at its own expense, to contest the same in good faith, in its

own name or on the providing party's behalf. In any such contest, the purchasing party shall promptly furnish the providing party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing party and the governmental authority.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

8. The Purchasing Party shall have the right, at its own expense, to claim a refund or credit, in its own name or on the Providing Party's behalf, of any such tax or fee that it determines to have paid in error, and the Purchasing Party shall be entitled to any recovery thereof.

**D.** Taxes And Fees Imposed On Providing Party But Passed On To Purchasing Party.

1. Taxes and fees imposed on the providing party, which are permitted or required to be passed on by the providing party to its customer, shall be borne by the purchasing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party

shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party disagrees with the providing party's determination as to the application or basis of any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing party shall abide by such determination and pay such taxes or fees to the providing party. The providing party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes or fees; provided, however, that any such contest undertaken at the request of the purchasing party shall be at the purchasing party's expense.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

**E.** Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest.

Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

## XII. Treatment of Proprietary and Confidential Information

**A.** It may be necessary for BellSouth and Carrier, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

**B.** Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

**C.** Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

(a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

**D.** Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the Federal Communications Commission or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

**E.** Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliates.

**F.** The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, or application, which is now or may hereafter be owned by the Discloser.

**G.** Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section XII shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

## XIII. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the appropriate company representatives. If the issue is not resolved within 30 days, either party may petition the FCC or applicable Commission for a resolution of the dispute. However, each party reserves the right to seek judicial review of any ruling made by the Commission concerning this Agreement.

## XIV. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

## XV. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

## XVI. Assignment

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

## XVII. Severability

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, it shall be severed from the Agreement and the remainder of this Agreement shall remain valid and enforceable and shall continue in full force and effect; provided however, that if any severed provisions of this Agreement are essential to any party's ability to continue to perform its material obligations hereunder, the parties shall immediately begin negotiations of new provisions to replace the severed provisions.

## XVIII. Survival

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, confidential information, limitations of liability and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

## XIX. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles, and the Communications Act of 1934 as amended by the Act.

## XX. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

## XXI. Filing of Agreement

Upon execution of this Agreement, it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public notice fees regarding the filing or approval of the Agreement, Carrier shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Carrier.

## XXII. Notices

**A.** Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

**BellSouth Telecommunications, Inc.**
675 W. Peachtree St. N.E.
Suite 4300
Atlanta, Georgia 30375
Attn: Legal Dept. "Wireless " Attorney
Fax: (404) 614-4054

**Metrocall, Inc.**
2800 Technology Drive, Suite 400
Plano, TX 75074
Attn: Kathryn Wenrick
Phone: (972) 801-1624
Fax: (972) 801-1699
Email: kitty.wenrick@usamobility.com

cc: Frederick M. Joyce
Venable LLP
575 7th Street
NW Washington, DC 20004-1601
Phone (202) 344-4653
Fax (202) 344-8300

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

**B.** Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails; and by overnight mail, the day after being sent.

**C.** Notwithstanding the foregoing, BellSouth may provide Carrier notice via Internet posting of changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement and any other information of general applicability.

## XXIII. Headings of No Force or Effect

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

## XXIV. Multiple Counterparts

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

## XXV. Compliance with Applicable Law

Each Party shall comply at its own expense with applicable law.

## XXVI. Entire Agreement

This Agreement and its Attachments, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them. Any orders placed under prior agreement between the Parties shall be governed by the term of this Agreement. Neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby. In the event of any conflict between the term(s) of this Agreement and those of an applicable tariff, the terms of this Agreement shall control.

## XXVII. Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.**

By: Randy J. Ham

Name: Randy J. Ham

Title: Assistant Director – Wireless Interconnection

Date: 8/29/05

**Metrocall, Inc.**

By: Kathy Wenrick

Name: KATHRYN WENRICK

Title: VP, Telecommunications

Date: 8/17/05



CCCS 26 of 27

**Attachment B-1**

CMRS Local Interconnection Rates
(All rates are Per Minute of Use)

June 15, 2004 through current term of the Agreement, (unless the FCC approves a rate other than that reflected herein)

| | |
|---|---|
| Type 1 (End Office Switched) | $.0007 |
| Type 2A (Tandem Switched) | $.0007 |
| Type 2B (Dedicated End Office) | $.0007 |