



Control Number: 28250



Item Number: 1

Addendum StartPage: 13

DOCKET NO. 28250

APPLICATION OF PATHWAY COM- §
TEL, INC. AND T-MOBILE USA, INC. §
f/k/a VOICESTREAM WIRELESS §
CORPORATION FOR §
ADMINISTRATIVE APPROVAL OF §
INTERCONNECTION AGREEMENT §
PURSUANT TO PURA AND THE §
FEDERAL TELECOMMUNICATIONS §
ACT OF 1996

PUBLIC UTILITY COMMISSION PM 3:53
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**APPLICATION OF PATHWAY COM-TEL, INC.
AND T-MOBILE USA, INC. f/k/a VOICESTREAM WIRELESS CORPORATION
FOR ADMINISTRATIVE APPROVAL OF INTERCONNECTION AGREEMENT**

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Date Filed

July 31, 2003



July 31, 2003

Ms. Cathy Hightower
Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78701

RE: Docket No. _____ - Application of Pathway Com-Tel, Inc. and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation for Administrative Approval of Interconnection Agreement under PURA and the Federal Telecommunications Act of 1996

Dear Ms. Hightower:

Enclosed for filing with the Commission pursuant to P.U.C. Substantive Rule §26.272 is an original and nine (9) copies of an Application for Administrative Approval of the Landline/CMRS Transport & Termination Agreement between Pathway Com-Tel, Inc. ("Pathway") and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation ("T-Mobile"). Pathway and T-Mobile negotiated this Agreement under the Federal Telecommunications Act of 1996 and the Public Utility Regulatory Act.

The Texas Intrastate Intra-MTA Transport and Termination Agreement was negotiated in good faith, and there are no outstanding issues between the parties that need mediation or arbitration. A complete copy of the negotiated Agreement is included in this filing as Attachment I.

Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jarrod Harper", is written over a horizontal line.

Jarrod Harper
Authorized Representative for
Pathway Com-Tel, Inc.

JH/pjf

cc: Mr. Kirk Petty, Pathway Com-Tel, Inc.

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DOCKET NO. _____

APPLICATION OF PATHWAY COM-TEL, INC. AND T-MOBILE USA, INC. f/k/a VOICESTREAM WIRELESS CORPORATION FOR ADMINISTRATIVE APPROVAL OF INTERCONNECTION AGREEMENT PURSUANT TO PURA AND THE FEDERAL TELECOMMUNICATIONS ACT OF 1996	§ § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**APPLICATION OF PATHWAY COM-TEL, INC.
AND T-MOBILE USA, INC. f/k/a VOICESTREAM WIRELESS CORPORATION
FOR ADMINISTRATIVE APPROVAL OF INTERCONNECTION AGREEMENT**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COME NOW Pathway Com-Tel, Inc. ("Pathway") and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation ("T-Mobile"), collectively (the "Applicants") and file this Joint Application for Administrative Approval of Interconnection Agreement (the "Agreement") under the Federal Telecommunications Act of 1996¹, the Public Utility Regulatory Act², and would respectfully show the Public Utility Commission of Texas ("Commission") the following:

1. Parties

The parties to the proceeding are Pathway, represented by the undersigned, and Nextel. A copy of this application is being provided to and served to the T-Mobile representative, Ms. Marin Fettman, T-Mobile USA, Inc., 12920 SE 38th Street, Bellevue, Washington 98006.

¹ Telecommunications Act of 1996 § 3, 47U.S.C.A. § 252 (West 1991 & Supp. 2001) (hereinafter referred to as the "Act").

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001 – 64.158 (Vernon 1998& Supp. 2002)

II. Interconnection Agreement

Pathway and T-Mobile request approval of an Interconnection Agreement executed pursuant to the terms of the Act, PURA, and P.U.C. Procedural and Substantive Rules. The Parties have engaged in good faith negotiations and have addressed the issues involved in an interconnection. There are no outstanding issues between Pathway and T-Mobile that need the assistance of mediation or arbitration at this time.

The proper parties to this proceeding are:

Pathway Com-Tel, Inc.
c/o Jarrod Harper
CHR Solutions
3721 Executive Center Drive, Suite 200
Austin, Texas 78731-1639
(512) 343-2544 – telephone
(512) 343-0119 – fax

Ms. Marin Fettman
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, Washington 98006
(425) 378-5244 – telephone
(425) 378-4840 – fax

III. Request for Approval

Pathway and T-Mobile jointly seek approval of this Agreement consistent with the provisions of the Act and PURA. The Parties represent and believe that the implementation of this Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.

✓

Pathway and T-Mobile respectfully request that the Commission grant expeditious approval of this Agreement, without change, suspension or other delay in this implementation. This is a bilateral agreement, reached as a result of negotiation and compromise between the Parties as competitors, and expeditious approval would provide consistency to this business endeavor. The Parties do not believe a docket or intervention by other parties is necessary or appropriate.

IV. Standard for Review

The statutory standards of review are set forth in Section 252(e) of the Act and P.U.C. Subst. Rule §22.308 which provides as follows:

Section 252(e) of the Act:

- (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--
 - (A) 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; or...

P.U.C. Proc.Rule § 22.308(c)(1):

An application considered under this section shall be administratively reviewed by presiding officer unless the presiding officer determines that formal review of the application is appropriate pursuant to paragraph (2) of this subsection.

P.U.C. Proc.Rule § 22.308(e):

In any proceeding conducted by the commission, the commission will consider only evidence and argument concerning whether the agreement, or some portion thereof :

- (1) discriminates against a telecommunications carrier that is not a party to the agreement; or
- (2) is not consistent with the public interest, convenience, and necessity; or
- (3) is not consistent with the other requirements of state law.

The attached affidavit of Kirk Petty establishes that the Agreement satisfies these standards.

V. Requested Procedure

Given the relatively narrow scope of the approval process contemplated by Section 252(e) of the Act and P.U.C. Proc. Rule § 22.308, Applicants suggest that the Commission: (1) publish notice, and (2) administratively review the application on an expedited basis as provided for under the administrative review process in P.U.C. Proc. Rule § 22.308(c)(1).

VI. Relief Requested

The parties request the Commission to provide the following relief:

1. Forthwith issue notice in the *Texas Register* requesting written comments, if any, on an expedited basis.
2. Approve the Agreement as early as possible by staff memorandum or Commission order.

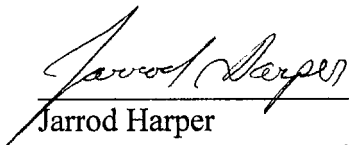
VII. Conclusion

For the reasons set forth above, Applicants respectfully pray that the Commission grant all of the relief requested herein and such other and further relief to which the parties may show themselves to be entitled or this Commission deems appropriate under the circumstance.

Respectfully submitted,

CHR Solutions
3721 Executive Center Drive, Suite 200
Austin, Texas 78701
(512) 343-2544 – telephone
(512) 343-0119 – fax

By:



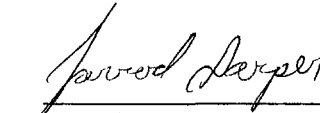
Jarrod Harper
Authorized Representative for
Pathway Com-Tel, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on all parties or record in this proceeding on the 31st day of July 2003, to:

Ms. Cathy Hightower
Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78701

Ms. Marin Fettman
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, Washington 98006



Jarrod Harper

ATTACHMENT I

**LANDLINE/CMRS
TRANSPORT & TERMINATION AGREEMENT**

Landline/CMRS Transport & Termination Agreement

This Landline/CMRS Transport and Termination Agreement (the "Agreement"), is made between Pathway Com-Tel, Inc. (CLEC) (hereafter "Pathway"), a Texas corporation, and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation (hereafter "VoiceStream" or "T-Mobile") in its capacity as a provider of commercial mobile radio services ("CMRS"). Pathway and T-Mobile being referred to collectively as the "Parties" and individually as a "Party." This Agreement covers services in the state of Texas (the "State").

WHEREAS, the Parties acknowledge that Pathway is entitled to maintain that it is a rural telephone company (as defined in 47 U.S.C. 153) as provided by 47 U.S.C. 251(f). By entering into this agreement, Pathway is not waiving its right to maintain that it is a rural telephone company entitling it to exemption under 47 U.S.C. 251(f).

WHEREAS, the mutual exchange and termination of traffic originating on each Party's network is necessary and desirable; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, in order to address unique and specific requirements applicable to the Parties and their networks and to comply with applicable regulatory requirements specific to the Parties, the Parties desire to enter into an agreement to establish reciprocal compensation pursuant to Section 251(b)(5) of the Telecommunications Act of 1996 (the "Act"), and applicable state laws;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pathway and T-Mobile hereby covenant and agree as follows:

ARTICLE I SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within the areas in which they operate within the State for purposes of interconnection and the exchange of traffic between their respective end user customers. This Agreement will be filed with the Texas Public Utility Commission (the "PUC"). If the PUC takes action to reject any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion, provided that such rejected portion shall not affect the validity of the remainder of this Agreement. The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

ARTICLE II DEFINITIONS

2. General Definitions.

Except as otherwise specified herein, the following definitions shall apply to all Articles contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article.

2.1 An "Affiliate" of a Party means a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party. For purposes of this definition, the term "own" means to have a substantial ownership interest in or have voting control of a majority of the ownership interests in such corporation or other legal entity.

2.2 "Automatic Number Identification" or "ANI" refers to the number transmitted through the network identifying the calling party.

2.3 "Telcordia Technologies" ("Telcordia") formerly known as Bellcore means the organization formerly owned jointly by the Bell regional holding companies and that is now owned by Science Applications International Corp. (SAIC), that conducts research and development projects, including development of new telecommunications services. Telcordia also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.

2.4 "Business Day" shall mean Monday through Friday, except for holidays on which the U.S. mail is not delivered.

2.5 "Common Channel Signaling" or "CCS" means a high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.

2.6 "FCC" means Federal Communications Commission.

2.7 "ISUP" means a part of the SS7 protocol that defines call setup messages and call takedown messages.

2.8 "Local Exchange Carrier" or "LEC" means any company certified by the PUC to provide local exchange telecommunications service.

2.9 “Local Telecommunications Traffic” for the purposes of determining compensation under this Agreement means telecommunications traffic originated and terminated between a LEC’s end user customer and a CMRS provider’s end user customer that, at the beginning of the call, originates and terminates within the same Major Trading Area (“MTA”), as defined in § 47 CFR 24.202(a). The origination point and the termination point on Pathway’s network shall be the end office serving the calling or called party. The origination point and the termination point on T-Mobile’s network shall be the originating or terminating cell site, which services the calling or called party.

2.10 “North American Numbering Plan” and “NANP” means the system of telephone numbering employed in the United States, Canada, and the Caribbean countries that employ NPA 809.

2.11 “Numbering Plan Area” and “NPA” is also sometimes referred to as an area code. This is the three-digit indicator, which is defined by the “A”, “B”, and “C” digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, “Geographic NPAs” and “Non-Geographic NPAs”. A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a “Service Area Code” or “SAC Code” is typically associated with a specialized telecommunications service, which may be provided across multiple geographic NPA areas. 800, 900, 700 and 888 are examples of Non-Geographic NPAs.

2.12 “NXX”, “NXX Code”, “Central Office Code” or “CO Code” is the three-digit switch entity indicator, which is defined by the “D”, “E”, and “F” digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers. Historically, entire NXX code blocks have been assigned to specific individual local exchange end office switches.

2.13 “POC” means Point of Connection.

2.14 “Provider” means Pathway and “Customer” means T-Mobile with respect to those services performed by Pathway pursuant to Article IV. T-Mobile shall be referred to as “Provider” and Pathway shall be referred to as “Customer” with respect to those services performed by T-Mobile pursuant to Article IV.

2.15 “Service Control Point” or “SCP” is the node in the signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from the SSP, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

2.16 “Service Switching Point” or “SSP” means a Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.

2.17 “Signaling Point” or “SP” means a node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.

2.18 “Signaling System 7” or “SS7” means the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute (“ANSI”) standards.

2.19 “Signal Transfer Point” or “STP” means a packet switch in the CCS network that is used to route signaling messages among SSPs, SPs, SCPs, and other STPs in order to set up calls and to query databases for advanced services.

2.20 “Traffic” or “Telecommunications Traffic” is non-ISP traffic that 1) originates on one Party’s network, 2) terminates on the other Party’s network, 3) is transited over the network of a third-party LEC, and 4) originates and terminates within the same MTA.

ARTICLE III GENERAL PROVISIONS

3.1 Scope of General Provisions. Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall take precedence, these General Provisions shall apply to all Articles and Appendices of this Agreement.

3.2 Term and Termination.

3.2.1 Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be twelve (12) months from the effective date referenced in the first paragraph of this Agreement and shall continue in effect month-to-month until either Party gives the other Party at least sixty (60) calendar days’ written notice of termination. Where a notice of termination is given, either party may prior to actual the termination date give notice under Section 251-52 of the Act of its desire to negotiate a successor agreement, in which case this Agreement shall continue in effect until the earlier of the date when a new agreement becomes effective, or the date when all relevant time periods and extensions of such periods for negotiation and/or arbitration under the Act have passed with no new agreement having become effective.

3.2.2 Post-Termination Arrangements. Except in the case of termination as a result of either Party’s default or a termination upon sale, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption under (a) a new

arrangement voluntarily executed by the Parties; (b) terms and conditions made generally available by Pathway to all CMRS providers in the state; or (c) as otherwise permitted by law or regulation.

3.2.3 Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party *provided however*, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

(b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

3.2.4 Liability Upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement or by its nature would be expected to survive termination.

3.3 Amendments. Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

3.4 Assignment. A Party shall not assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that a Party may assign this Agreement, or any portion thereof, without consent but with written notice to any entity which controls, is controlled by or is under common control with the assigning Party. Any such assignment shall not, in any way, affect or limit the rights and obligations of the Parties under the terms of this Agreement.

3.5 Authority. Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

3.6 Billing and Payment.

3.6.1 Billing. Charges provided for in Appendix A shall be billed by each Party monthly. Parties agree to pay all charges specified in Appendix A within thirty (30) calendar days of the bill date as printed on the face of the bill.

3.6.2 Dispute. If Customer disputes a billing statement, Customer shall notify Provider in writing regarding the nature and the basis of the dispute within one hundred twenty (120) calendar days of the statement date or the dispute shall be waived. Provider shall not bill Customer for traffic terminated more than one hundred twenty (120) calendar days before the date of invoice. Provider and Customer shall diligently in good faith work toward resolution of all billing issues.

3.6.3 Late Payment Charges. If any undisputed amount due on the billing statement is not received by Provider on the payment date, Provider may charge, and Customer agrees to pay, interest on the past due balance at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum non-usurious rate of interest under applicable law. Late payment charges shall be included on the next statement.

3.6.4 Taxes. Provider shall charge and collect from Customer, and Customer agrees to pay to Provider, appropriate federal, state, and local taxes, and other customary charges, except to the extent Customer notifies Provider and provides to Provider appropriate documentation that Customer qualifies for a full or partial exemption. It is the intent of each Party that each shall charge and collect from their respective customers all applicable federal, state, and local taxes and other customary charges.

3.7 Binding Effect. This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assignees of the Parties.

3.8 Compliance with Laws and Regulations. Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

3.9 Confidential Information.

3.9.1 Identification. Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally disclosed information shall be deemed Confidential Information

only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within twenty (20) calendar days after oral disclosure.

3.9.2 Handling. In order to protect such Confidential Information from improper disclosure, each Party agrees:

- (a) That all-Confidential Information shall be and shall remain the exclusive property of the source;
- (b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;
- (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- (d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written consent of the source;
- (e) To return promptly any copies of such Confidential Information to the source at its request; and
- (f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

3.9.3 Exceptions. These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protection arrangements.

3.9.4 Survival. The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

- 3.10 Consent. Where consent, approval, or mutual agreement is required of a Party, it shall not be unreasonably withheld, conditioned or delayed.
- 3.11 Dispute Resolution.
- 3.11.1 Alternative to Litigation. Except for a recourse that may be available to either Party before the FCC or Texas PUC, the Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except as otherwise stated in the preceding sentence, and except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 3.11.2 Negotiations. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for the purpose of settlement, exempt from discovery and production, which shall not be admissible in arbitration or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.
- 3.11.3 Arbitration. If negotiations fail to produce an agreeable resolution within ninety (90) days of a written request, the Parties may submit to binding arbitration or they are free to pursue other legal recourse.
- 3.12 Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, express or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- 3.13 Expenses. Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

- 3.14 Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease.
- 3.15 Governing Law. This Agreement shall be governed by and construed in accordance with the Telecommunications Act of 1996, the order of the FCC construing and implementing the Act (including, but not limited to, First Report and Order, CC Docket No. 96-98 and 95-185, released August 8, 1996), and to the extent not inconsistent therewith, the domestic laws of the State of Texas, without giving effect to the conflicts of law provisions thereof.
- 3.16 Headings. The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
- 3.17 Independent Contractor Relationship. The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all applicable laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.
- 3.18 Liability and Indemnity.
- 3.18.1 Indemnification. Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury or to death of any person or persons, or for losses, damages, or destruction of property,

whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form or action.

3.18.2 End User and Content-Related Claims. Customer agrees to release, indemnify, defend, and hold harmless Provider, its affiliates, and any third party provider or operator of facilities involved in the provision of Services or facilities under this Agreement (collectively, the "Indemnified Parties") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by Customer's end users against an Indemnified Party arising from Services. Customer further agrees to release, indemnify, defend, and hold harmless the Indemnified Parties from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by Customer or Customer's end users, or any other act or omission of Customer or Customer's end users.

3.18.3 DISCLAIMER. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, 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.

3.18.4 Limitation of Liability. Provider's liability, whether in contract, tort or otherwise, shall be limited to direct damages. Under no circumstances shall Provider 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, the Parties recognize that Provider may, from time to time, provide advice, make recommendations, or supply other analysis related to the Services described in this Agreement, and, while Provider shall use diligent efforts in this regard, Customer acknowledges and agrees that this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

3.18.5 Intellectual Property. Neither Party shall have any obligation to defend, indemnify, or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting

that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

- 3.19 Most Favored Nation. If Pathway enters into an agreement that is approved by the PUC, which provides for transport and termination of Local Telecommunications Traffic within the State, Pathway shall upon request of T-Mobile, if applicable, promptly make available to T-Mobile such arrangement upon the same rates, terms and conditions.
- 3.20 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.
- 3.21 No Offer. Submission of this Agreement for examination or signature does not constitute an offer by Provider for the provision of the products or services described herein. This Agreement will be effective only upon execution and delivery by both Parties.
- 3.22 Notices. 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 receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. 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:

If to Pathway:

Mr. Kirk Petty,
General Manager
Pathway Com-Tel, Inc.
P.O. Box 1298
Joshua, Texas 76058
Tel: 817-484-2222
Fax: 817-447-0169

If to T-Mobile:

David A. Miller
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Telephone: (425) 378-4000
Facsimile: (425) 378-4840
Email: dave.miller@t-mobile.com

With a copy to:

Ms. Chris Sykes
Director – Carrier Management
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Telephone: (425) 378-4000

- 3.23 Ordering. Industry Standard Access Service Request (ASR) and/or Local Service Request (LSR) forms will be used to order service(s) from Pathway. When required, additional information can be provided in the remarks field of the form(s), or in a separate letter of explanation.
- 3.24 Protection.
- 3.24.1 Impairment of Service. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").
- 3.24.2 Resolution. If either Party causes an Impairment of Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.
- 3.25 Publicity. Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of services, or facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both Pathway and T-Mobile. Except as specifically set out in this Agreement, nothing in this Agreement shall 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.
- 3.26 Regulatory Agency Control. This Agreement shall at all times be subject to approval, changes, rules and regulations of the Federal Communications Commission and/or the Texas PUC to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency.
- 3.27 Rule of Construction. No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.

- 3.28 Selection of References. Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
- 3.29 Severability. If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable or required to be materially modified, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal or modification of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within sixty (60) days, either Party may terminate this Agreement without penalty or liability for such termination upon ninety (90) days written notice to the other Party.
- 3.30 Subcontractors. Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement, but the Provider shall remain legally obligated under the terms of the Agreement for the full and complete satisfaction of its duties and obligations hereunder.
- 3.31 Subsequent Law. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline.
- 3.32 Waiver. The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

ARTICLE IV TRANSPORT AND TERMINATION OF TRAFFIC

4.1 Services Covered by This Article.

4.1.1 Types of Services. This Article governs the provision of inter-network facilities and the transport and termination of Local Telecommunications Traffic, as defined herein, transited via a third party LEC between Pathway and T-Mobile. The services and facilities described in this Article shall be referred to in this Article IV as the "Services".

4.2 Transport and Termination of Traffic.

4.2.1 Types of Traffic. The Parties shall reciprocally terminate Local Telecommunications Traffic, as defined herein, originating on each other's networks and terminating on the other Party's network via a third party. Pathway, will unless notified to the contrary, pass local traffic to/from T-Mobile and third party LEC end offices subtending an Pathway tandem in accordance with Appendix A attached to the Agreement and made a part hereof. Nothing in this provision shall prohibit either Party from establishing other financial arrangements for this transit traffic with the other LEC(s) from/to whose network such traffic ultimately originates or terminates.

4.2.2 Compensation for Exchange of Traffic. The Parties shall compensate each other for the exchange of Telecommunications Traffic transited via a third-party LEC in accordance with Appendix A attached to this Agreement and made a part hereof. If T-Mobile chooses not to measure the amount of land-to-mobile traffic, Pathway shall bill T-Mobile for the amount of mobile-to-land Local Telecommunications Traffic multiplied by the Shared Facilities Factor (see Appendix A, Section A.2).

4.2.3 Shared Facilities Factor. Where Interconnection Facilities are used exclusively to carry Telecommunications Traffic originating on one Party's system, or on a third party system transiting such Party's system, the cost of the Facilities will be borne by that Party. Where Interconnection Facilities provisioned by one of the Parties are used for two-way traffic, the applicable recurring and non-recurring charges (if any) will be apportioned by an agreed upon percentage representing either the estimated percentage or the actual percentage of traffic originating on the network of each Party. If Facilities are purchased from a third party, the ordering Party will gain the approval of the other Party and shall bill the other Party the appropriate agreed upon percentage of applicable recurring and non-recurring charges (if any). This percentage is referred to as the Shared Facilities Factor as agreed in Appendix A, Section A.2 of this Agreement. The Parties will review this factor on a periodic basis and, if warranted by the actual usage, revise the factor appropriately, not to be revised more than quarterly.

4.2.4 Traffic Studies. A joint traffic study performed by Pathway and T-Mobile to determine actual traffic volumes between the Parties, with a minimum of thirty (30) days data, the results determining a Mobile to Land percentage factor. Traffic study results may be revised upon mutual agreement between the Parties and at the request of either Party no more frequently that once every six (6) months.

4.2.5 Tandem Switching Services. Pathway will provide tandem switching at Pathway access tandems for traffic between T-Mobile and end offices subtending the Pathway access tandem.

- 4.3 Indirect Network Connection. When the Parties connect their networks indirectly, via a third LEC's tandem, the Parties agree that until the Parties are technically able to record and distinguish such traffic, the Parties will utilize the usage data generated by the intermediary LEC as the basis to compensate each other for the transport and termination of Local Telecommunications Traffic. The Parties will compensate each other at the transport and termination rates set forth in Appendix A. Once the Parties are technically able to record and distinguish transit traffic, then actual measured usage shall provide the basis for compensation. The originating Party agrees to pay any transit charges that may be assessed by an intermediary LEC. The compensation arrangement for indirect interconnection shall be subject to renegotiation on the request of either party if an intermediary LEC whose facilities or services are used in the performance of transport and termination in connection with this traffic changes the applicable rates, terms or conditions of those intermediary services. Neither Party shall deliver traffic destined to terminate at the other Party's end office via another LEC's end office.

4.3.1 Prior Traffic. The Parties may agree to true up for some agreed-upon amount of traffic exchanged prior to the execution of this Agreement.

- 4.4 Network Management and Maintenance. The Parties will work cooperatively to install and maintain a reliable network. The Parties will exchange appropriate information (e.g., maintenance contact numbers and network information, etc.) to achieve this desired reliability, subject to the confidentiality provisions herein.

4.4.1 Network Management Controls. Each Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center. A FAX number must also be provided to facilitate notifications for planned mass calling events.

T-Mobile
24 Hr.: (713) 844-9100
FAX: (713) 844-9211

Pathway
24 Hr.: (817) 484-2222
FAX: (817) 447-0169

- 4.5 Number Resources.

4.5.1 Code Administration. The Parties will comply with code administration requirements as prescribed by the FCC, the Texas PUC and accepted industry guidelines.

- 4.6 Common Channel Signaling.

4.6.1 Service Description. The Parties will provide Common Channel Signaling ("CCS") to one another via Signaling System 7 ("SS7") network interconnection, where and as available, in the manner specified in FCC Order 95-187, in conjunction with all traffic exchange trunk groups. The Parties will cooperate on the exchange of all appropriate SS7 messages for local and intraLATA call set-up

signaling, including ISUP and Transaction Capabilities Application Part ("TCAP") messages to facilitate interoperability of CLASS Features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon.

4.6.2 Signaling Parameters. All SS7 signaling parameters will be provided in conjunction with traffic exchange trunk groups, where and as available. These parameters include Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, originating line information, charge number, etc. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter ("CIP"), wherever such information is needed for call routing or billing.

4.6.3 Privacy. Each Party will honor all rules and statutes concerning privacy indicators as required under applicable law.

4.6.4 Connection through STP. T-Mobile and Pathway will connect SS7 networks indirectly via route sets through Southwestern Bell STP(s) located in Houston, Texas, or another third party. Each Party will bear responsibility for the costs associated with connecting its own SS7 network to the third party signaling provider, as well as for any per unit charges assessed by the third party signaling provider for traffic originated by the Party. The Parties agree that they will periodically evaluate the financial and technical feasibility of directly connecting the T-Mobile STP(s) with the Pathway STP(s) and upon mutual agreement of the Parties may change to such a direct arrangement at any time during the term of this Agreement.

4.6.5 Multi-Frequency Signaling. In the case where CCS is not available, in-band Multi-Frequency ("MF"), wink start, E & M channel associated signaling with ANI will be provided by the Parties. Network signaling information, such as CIC/OZZ, will be provided wherever such information is needed for call routing or billing.

- 4.7 The Parties shall adjust compensation for the transport and termination of Local Telecommunications Traffic in the event of PUC-approved rates based on a cost study as a result of a general rate decision by the Commission or as a result of arbitration involving one of the Parties. The effective date of the new rate will be date of the Commission order. The parties agree to true up to generally applicable rates within a forty five (45) day period.

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the date of the last party to execute this Agreement below.

T-Mobile USA, Inc.

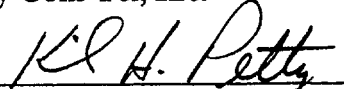
By: 

Name: Dave Miller

Title: Sr. Vice President & General Counsel

Date: 5/21/03

Pathway Com-Tel, Inc.

By: 

Name: Kirk H. Petty

Title: GENERAL MANAGER

Date: 6/2/03

Landline/CMRS Transport & Termination Agreement

APPENDIX A
RATES AND CHARGES

TRANSPORT AND TERMINATION

A.1. Rate per terminated MOU \$.0125

This rate is reciprocal for traffic exchanged between Pathway and T-Mobile and applies for all MOUs exchanged at any POC.

A.2. Shared Facilities Factor. This percentage, referred to as the Shared Facilities Factor, shall be:

Pathway	30%
T-Mobile	70%

ATTACHMENT II

AFFIDAVIT OF KIRK PETTY

STATE OF TEXAS

COUNTY OF Johnson

§
§
§

AFFIDAVIT OF KIRK PETTY

BEFORE ME, the undersigned authority, on this 28th day of July, 2003 personally appeared Kirk Petty who, upon being by me duly sworn on oath, deposed and said the following:

1. "My name is Kirk Petty. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am responsible for the negotiation of agreements on behalf of Pathway Com-Tel, Inc. ("Pathway"). I have personal knowledge of the Landline/CMRS Transport and Termination Agreement and the related attachments (the "Agreement") between Pathway and T-Mobile. The parties have diligently negotiated culminating in this Agreement".

2. The Agreement is pro-competitive in that it implements the terms of the underlying Agreement between the parties in a way which the parties believe is consistent with Section 251(b)(5) of the Telecommunications Act of 1996.

3. The implementation of the Agreement is consistent with the public interest, convenience and necessity.

4. Further, consistent with the policy provisions of PURA, I believe that this Agreement will foster, encourage and accelerate the continuing development and emergence of a competitive advanced telecommunications environment and infrastructure and to that end, not only advance, but also protect the public interest.

5. I am not aware of any provision in this Agreement that discriminates against any telecommunications carrier who chooses to adopt the terms, conditions and rates of the Agreement.

6. I am not aware of any outstanding issues between the parties that need the assistance of mediation or arbitration at this time.

Further, Affiant sayeth not.

Kirk H. Petty
Kirk Petty
General Manager
Pathway Com-Tel, Inc.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 28th
day of July, 2003.

Mary Jo Donnelly
Notary Public in and for the State of Texas

My Commission expires on: 5/17/05

