



Control Number: 31105



Item Number: 1

Addendum StartPage: 0

DOCKET NO. 31105

APPLICATION OF PATHWAY COM-
TEL, INC. AND NEXTEL OF TEXAS,
INC. FOR ADMINISTRATIVE
APPROVAL OF INTERCONNECTION
AGREEMENT PURSUANT TO PURA
AND THE FEDERAL
TELECOMMUNICATIONS ACT OF
1996

§ PUBLIC UTILITY COMMISSION
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**APPLICATION OF PATHWAY COM-TEL, INC. AND NEXTEL OF TEXAS, INC.
FOR ADMINISTRATIVE APPROVAL OF INTERCONNECTION AGREEMENT**

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Date Filed

May 17, 2005



May 17, 2005

Mr. James R. Galloway
Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78701

RE: Docket No. _____ - Application of Pathway Com-Tel, Inc. and Nextel of Texas, Inc. for Administrative Approval of Interconnection Agreement under PURA and the Federal Telecommunications Act of 1996

Dear Sir or Madam:

Enclosed for filing with the Commission pursuant to P.U.C. Substantive Rule §26.272 are an original and nine (9) copies of an Application for Administrative Approval of the Transport and Termination Agreement between Pathway Com-Tel, Inc. ("Pathway") and Nextel of Texas, Inc. ("Nextel"). Pathway and Nextel have negotiated this Agreement under the Federal Telecommunications Act of 1996 and the Public Utility Regulatory Act.

This Transport and Termination Agreement has been 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 cursive script, reading "Jarrod Harper".

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

JH/pjf

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

DOCKET NO. _____

APPLICATION OF PATHWAY COM-TEL, INC. AND NEXTEL OF TEXAS, INC. 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 NEXTEL OF TEXAS, INC. FOR ADMINISTRATIVE APPROVAL OF INTERCONNECTION AGREEMENT

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COME NOW Pathway Com-Tel, Inc. ("Pathway") and Nextel of Texas, Inc. ("Nextel"), 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 on the Nextel representative, Mr. Bob Edgerly, Sr. Manager, Interconnect, Nextel Communications, Inc., 12000 Sunrise Valley Drive, Reston, Virginia 20191.

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 Nextel 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 Nextel 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

Nextel Communications, Inc.
Mr. Bob Edgerly
Senior Manager, Interconnect
12000 Sunrise Valley Drive
Reston, Virginia 20191
(703) 592-2678 – telephone

III. Request for Approval

Pathway and Nextel 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 Nextel 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 for Pathway 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 78731-1639
(512) 343-2544 – telephone
(512) 343-0119 – fax

By:



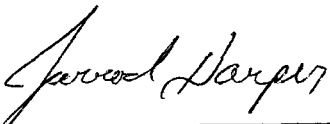
Jarrod Harper
Authorized Representative for
Pathway Com-Tel, Inc.

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 17th day of May 2005, to:

Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78701

Mr. Bob Edgerly
Senior Manager, Interconnect
Nextel Communications, Inc.
12000 Sunrise Valley Drive
Reston, Virginia 20191



Jarrod Harper

ATTACHMENT I

**TRANSPORT AND TERMINATION
AGREEMENT**

TRANSPORT AND TERMINATION AGREEMENT

By and Between

Nextel of Texas, Inc.

And

PATHWAY COM-TEL, INC.

In the state of

Texas

TRANSPORT AND TERMINATION AGREEMENT

This Reciprocal Interconnection, Transport and Termination Agreement ("Agreement") is entered into as of the 1st day of February, 2005, by and between Pathway Com-Tel, Inc. ("Pathway"), and Nextel of Texas, Inc. ("Nextel"). Pathway and Nextel are referred to individually as "Party" and together as "Parties" to this Agreement.

WHEREAS, Pathway is a Competitive Local Exchange Carrier (CLEC) in the State of Texas;

WHEREAS, Nextel is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service Provider;

WHEREAS, Pathway and Nextel desire to establish arrangements between one another for the exchange of telecommunications traffic between their respective networks for the benefit of the Parties and their customers.

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996.

WHEREAS, the Parties agree that their entry into this Agreement is without prejudice to and does not waive 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 related to the same types of arrangements covered in this Agreement, and;

NOW, THEREFORE, in consideration of the foregoing and the undertakings contained herein, Pathway and Nextel agree as follows:

This Agreement sets forth the terms, conditions and prices under which the Parties agree to indirectly interconnect their networks via the network of a Third Party Provider for the mutual exchange of traffic between the Parties' networks.

Except as otherwise expressly provided for herein, this Agreement does not obligate either Party to provide arrangements or transport or terminate traffic not specifically provided for herein. Except as otherwise expressly provided for herein, this Agreement has no effect on the definition of End User services that either Party offers to its End User Customers, the services either Party chooses to offer to its respective End User Customers, the rate levels or rate structures that either Party charges its End Users for services, or the manner in which either Party provisions or routes the services either Party provides to its respective End User Customers.

1.0 Definitions

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms may be defined elsewhere in this Agreement, as well. Terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the effective date of this Agreement.

- 1.1 "Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended.
- 1.2 "Cell Site" means the location of radio transmitting and receiving facilities associated with the origination and termination of wireless traffic to a wireless End User.
- 1.3 "Commercial Mobile Radio Service" or "CMRS" has the meaning given in 47 C.F.R. Section 20.
- 1.4 "Commission" means the Public Utility Commission of Texas.
- 1.5 "Competitive Local Exchange Carrier or CLEC" has the meaning given the term in the Act.
- 1.6 "Conversation Time" means the time (in full second increments) that both Parties' equipment is used for a call, measured from the receipt of answer supervision to disconnect supervision.
- 1.7 "Direct Connection" means either a one-way or a two-way connection between a Pathway end office and a Nextel mobile switching center (MSC) or cell site. The connection must be physically located in a pathway rate center.
- 1.8 "End Office" means a local Pathway switching point where Pathway customer station loops are terminated for purposes of interconnection to each other and to the network.
- 1.9 "End User" means, whether or not capitalized, any business, residential or governmental Customer of services provided by a Party, and includes the term "Customer". More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.
- 1.10 "FCC" means the Federal Communications Commission.
- 1.11 "Indirectly Connected" refers to a network arrangement in which the networks of the Parties are connected through a Third Party Provider's facilities.
- 1.12 "Indirect Traffic" means non-ISP traffic which is originated by one Party and terminated to the other Party in which a third party provides the intermediary transiting service. Indirect traffic does not require a physical direct trunk group between the Parties.

- 1.13 "Interconnection" refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telecommunications.
- 1.14 "Interexchange Carrier or IXC" – Telecommunications carrier other than a Commercial Mobile Radio Service as defined in 47 C.F.R. §20.3 that provides facilities-based, long-haul long distance service.
- 1.15 "InterMTA Traffic" refers to calls which originate in one MTA and terminate in another MTA.
- 1.16 "Local Exchange Carrier or LEC" - Local Exchange Carrier has the meaning given the term in the Act.
- 1.17 "Local Traffic" means non-ISP traffic exchanged between Nextel and Pathway that, at the beginning of the call, originates and terminates within the same MTA. Traffic exchanged through an IXC is not considered Local Traffic and therefore not subject to terminating compensation under this Agreement.
- 1.18 "Mobile Switching Center" or "MSC" is a switching facility that performs the switching for the routing of calls among its mobile subscribers and subscribers in other mobile or landline networks. The MSC is used to connect and switch trunk circuits within the wireless network and between the wireless network and the public switched network for wireless traffic by a CMRS provider."
- 1.19 "Major Trading Area" ("MTA") refers to the largest FCC-authorized wireless license territory which serves as the definition for local service area for CMRS traffic for purposes of reciprocal compensation under Section 251(b)(5) as defined in 47 C.F.R. 24.202(a).
- 1.20 "Party" means either Nextel or Pathway, and "Parties" means Nextel and Pathway.
- 1.21 "Point of Interconnection" or "POI" means a physical location where Pathway and Nextel interconnect their respective networks thereby establishing the technical interface and points for operational division of responsibility.
- 1.22 "Tandem" means a switching system that provides a concentration and distribution function for originating or terminating traffic between end offices, other tandems and Third Party Providers'.
- 1.23 "Telecommunications" has the meaning given in the Act, 47 U.S.C. §153(43).
- 1.24 "Telecommunications Carrier" has the meaning given in the Act, 47 U.S.C. §153(44).
- 1.25 "Termination" means the switching of Traffic at the terminating carrier's end office switch, or equivalent facilities, and delivery of such traffic to the called party.

- 1.26 "Third Party Provider" shall mean any facilities-based telecommunications carrier, including, without limitation, independent telephone companies, competitive local exchange carriers, or the incumbent local exchange carrier.
- 1.27 "Transiting Traffic" means Local Traffic that originated on one Party's network, transited through the other Party's network, and terminated to a third party Telecommunications Carrier's network.
- 1.28 "Transport" is the transmission and any necessary tandem switching of telecommunications traffic subject to Section 251(b)(5) of the Act from the Point Of Interconnection between the Parties to the terminating carrier's End Office Switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.
- 1.29 "Type 2B Interconnection" refers to facilities that provide a trunk side connection between an End Office and a wireless POI.

2.0 Description of Traffic

- 2.1 This agreement applies both to Local and to InterMTA traffic originated by the End User subscribers of one Party and terminated to end-user subscribers of the other Party. Traffic exchanged through an IXC is not considered Local Traffic and therefore not subject to terminating compensation under this Agreement.
- 2.2 The Parties agree that ISP-bound traffic between them, if any, is presently de minimus. If a Party has reason to believe in the future that ISP-bound traffic is not de minimus, either Party may reopen negotiations to determine mutually agreeable compensation. Pathway has not chosen to invoke the rate cap for ISP-bound traffic established in the FCC's Order on Remand and Report and Order on Intercarrier Compensation for ISP-bound Traffic in its Docket No. 96-98 with respect to any telecommunications carrier. If Pathway chooses to do so in the future, Pathway and Nextel will begin exchanging all Local Traffic at the capped rate on the effective date of the implementation of the rate cap.

3.0 Interconnection of the Parties' Facilities

This Section describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for the Transport and Termination of Telecommunications.

3.1 Interconnection Facilities

- 3.1.1 Type 2B Interconnection: Upon mutual agreement of the Parties, Type 2B facilities may be either One-Way or Two-Way facilities which provide a trunk side connection between Nextel and Pathway end office. The POI must be located within the Pathway end office exchange boundary.

3.1.2 The parties shall provide each other a forecast of projected mobile-to-land or land-to-mobile usage for each point of interconnection when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. When both Parties agree to utilize two-way facilities, charges will be shared by the Parties on a proportional usage basis as specified in Appendix A. The Parties may periodically review actual minutes transported on shared two-way facilities and modify percentages accordingly six months from the Effective Date of this Agreement and every twelve months thereafter.

3.2 Indirect Interconnection

Indirect traffic is traffic that is originated by a subscriber on the network of one Party, delivered via a third party Tandem and terminated on the network of the other Party. The terminating Party shall be entitled to charge the originating Party the rate as set forth in Appendix A ("Indirectly Connected Traffic").

3.3 Facility Locations

3.3.1 Technical Feasibility

Nextel may interconnect with Pathway at any technically feasible point. The Parties acknowledge for purposes of this requirement that the locations listed in Appendix B ("Carrier Interconnection Data") constitute the current technically feasible points of interconnection for Nextel to deliver traffic to Pathway for transport and termination by Pathway on its network.

3.3.2 LEC Requirements

The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of services or facilities by Pathway in areas where Pathway is not the LEC.

3.4 Additional Interconnection Methods

3.4.1 Nextel may provide its own transport facility for the delivery of traffic from its MSC (or other mutually agreed upon point on Nextel's network) to the interconnection point on Pathway's network.

3.4.2 When busy-hour Traffic levels reach a volume that would require twenty-four (24) or more trunks to any Pathway end office for three (3) consecutive months, either Party may request a direct trunk group between Nextel and the Pathway end office. When direct trunk groups are established between Nextel and a Pathway end office, the Parties will route traffic to or from such end office over the direct trunk group. An amendment will be required to effectuate this agreement provision.

3.5 Technical Requirements and Standards

- 3.5.1 Each Party will provide the services in this Agreement to the other Party at a standard at least equal in quality and performance to that which the Party provides itself and others. Nothing in this Agreement will limit either Party's ability to modify its network, including, without limitation, the incorporation of new equipment, new software or otherwise provided, neither Party shall modify its network to the extent such modification will intentionally disrupt or degrade the other Party's use of the network. Each Party will provide the other Party reasonable written notice, of any such modifications to its network, which will materially impact the other Party's service. Each Party will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required as a consequence of this Agreement, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities.

4.0 Transmission and Routing of Traffic

This Section provides the terms and conditions for the exchange of traffic between the Parties' respective networks for the transmission and routing by the Parties of wireless Traffic.

4.1 Mobile-to-Land Traffic – Directly Interconnected

- 4.1.1 Nextel shall be responsible for the delivery of traffic from its network to the appropriate POI on Pathway's network within Pathway's exchange area boundaries for the transport and termination of such traffic by Pathway to one of its end users. Unless otherwise negotiated, the POI shall be located at the Pathway central office.
- 4.1.2 If Nextel chooses to use Pathway's services or facilities, not otherwise covered under this Agreement, appropriate tariff rates will apply.

4.2 Land-to-Mobile Traffic – Directly Interconnected

- 4.2.1 Pathway shall be responsible for the delivery of traffic from its end users to the appropriate POI (within the end office exchange boundary providing the Type 2 interconnection) on Nextel's network for the transport and termination of such traffic by Nextel to one of its end users.
- 4.2.2 Pathway shall deliver all originating intraMTA traffic bound for Nextel over a direct interconnection trunk group.

4.3 Mobile-to-Land and Land-to-Mobile Traffic – Indirectly Connected

As an alternative to routing local traffic covered by this Agreement through a direct trunk group connection, either Party may choose to deliver traffic from its network through a Third Party Provider and thus be Indirectly Connected with the other Party for the delivery of local traffic originated on its network. The originating Party is responsible for Payment of any third party provider transit charges.

4.4 Local Traffic Routing

4.4.1 For numbers assigned to Nextel that have a rate center associated with the Pathway local calling area, including Extended Area Service (EAS) or Extended Local Calling (ELC), identified in Appendix B, Pathway will route all local originating traffic to Nextel utilizing local end user dialing patterns. Nothing in this agreement shall change the local calling scope of Pathway's end users. A toll call based on Pathway's Local Exchange Tariff shall remain a toll call. Pathway is not responsible for toll traffic terminated by Nextel that is routed by an Interexchange Carrier

4.4.2 Pathway is not responsible if a third party carrier can not terminate a Pathway originated call routed over an EAS or ELC trunk group between Pathway and a third party. Nextel shall negotiate the appropriate network interconnection with the third party carrier to ensure call completion.

5.0 Reciprocal Compensation

5.1 Rates - Nextel and Pathway shall reciprocally and symmetrically compensate one another for the transport and termination of Local Traffic at rates specified in Appendix A. Additional charges may also apply (on a non-symmetrical, non-reciprocal basis) as provided for in this Agreement.

5.2 Exclusions - Reciprocal Compensation shall apply solely to the transport and termination of Local Traffic, and shall not apply to any other traffic or services, including without limitation:

5.2.1 InterMTA Traffic;

5.2.2 Transiting Traffic;

5.2.3 Traffic which neither originates nor terminates on Nextel's network; and

5.2.4 paging traffic

6.0 Additional Compensation

- 6.1 Nextel shall pay Pathway a transit rate for mobile-to-land traffic that transits Pathway's network to terminate to a third-party LEC, such as EAS or ELC bound traffic. The rate that Pathway shall charge for Transiting Traffic is stated in Appendix A.
- 6.2 InterMTA Traffic: Pathway shall calculate and bill InterMTA charges as follows: Monthly mobile-to-land Local Traffic minutes of use will be multiplied by the InterMTA Traffic Factor set forth in Appendix A, to determine InterMTA minutes of use. InterMTA charges are then computed as the product of the InterMTA minutes-of-use determined above and Pathway's switched access rate as set forth in NECA Tariff No. 5. Pathway shall also use the InterMTA minutes of use to reduce the number of mobile-to-land Local Traffic minutes of use prior to billing. If traffic is handed from Pathway directly to an IXC, or from an IXC directly to Pathway, access charges shall not apply to Nextel.
- 6.3 InterMTA Traffic Factor: An initial InterMTA Traffic Factor as set forth in Appendix A, shall represent Nextel's estimate of traffic that either originates outside and terminates inside the MTA or originates inside and terminates outside the MTA. This factor may be adjusted six (6) months after the Effective Date of this Agreement and on each subsequent six-month anniversary of the Effective Date, based upon development and presentation of a traffic study analysis using a methodology that provides a reasonable measurement of terminated InterMTA Traffic.

7.0 Transmission and Routing of Other Types of Traffic

The Parties agree that this Agreement does not provide for the exchange of 911/E911 traffic and that if such service is requested by Nextel that the Parties will negotiate a separate agreement for such traffic.

8.0 Responsibilities of the Parties:

8.1 Verification Reviews

- 8.1.1 The Parties will be responsible for the accuracy and quality of the data as submitted to the other Party. Upon reasonable written notice, either Party or its authorized representative shall have the right to conduct a review and verification of the other Party's data to give assurances of compliance with the provisions of this Agreement. The review will consist of an examination and verification of data involving records, systems, procedures and other information related to the services performed by the Party as related to settlement charges or payments made in connection with this Agreement. Each Party, whether or not in connection with an on-site verification review, shall maintain reasonable records for a minimum of six (6) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement.

- 8.1.2 Either Party's right to access information for verification review purposes is limited to data not in excess of six (6) months in age. Once specific data has been reviewed and verified, it is unavailable for future reviews. Any items not reconciled at the end of a review will, however, be subject to a follow-up review effort. Any retroactive adjustments required subsequent to previously reviewed and verified data will also be subject to follow-up review. Information of the Party involved with a verification review shall be subject to the confidentiality provisions of this Agreement.
- 8.1.3 The Party requesting a verification review shall fully bear its costs associated with conducting a review. The Party being reviewed will provide access to required information, as outlined in this Section, at no charge to the reviewing Party. Should the reviewing Party request information or assistance beyond that reasonably required to conduct such a review, the Party being reviewed may, at its option, decline to comply with such request or may bill actual costs incurred in complying subsequent to the concurrence of the reviewing Party.

8.2 Billing

- 8.2.1 The Parties shall issue bills to each other based on actual usage recordings. For arrangements involving a Third Party Provider, the Parties shall issue a bill based on the best information available to the billing Party including, but not limited to, records of terminating traffic recorded by the billing Party or available Third Party Provider usage reports of traffic transiting the Third Party Provider network.
- 8.2.2 When a Third Party Provider indirect connected arrangement is used by either Party to deliver traffic to the other Party, and if the originating Party is unable to provide billing records of the calls that it originates to the terminating Party, or if the billing records it provides are incomplete and/or do not provide sufficient information to bill for calls originated by the originating Party, the terminating Party may use its terminating records or usage reports and/or records (such as a Cellular Transiting Usage Summary Report) generated by a Third Party Provider whose network is used to indirectly connect the traffic as the basis for billing the originating Party.
- 8.2.3 The Parties shall pay each other for all charges in accordance with the rates set forth in Section 5.1 of this agreement. Such payments are to be received within 45 days from the date of the billing statement. The Parties shall pay a late charge on any undisputed charges, which are not paid within the 45-day period. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law.
- 8.2.4 If either Party disputes a billing statement issued by the other Party, the disputing Party shall notify the billing Party in writing regarding the nature and the basis of the dispute within thirty (60) days of the statement date, or the dispute shall be waived. The Parties shall diligently work toward resolution of all billing issues.
- 8.2.5 Conversation Time – For purposes of billing compensation, billed minutes will be based upon Conversation Time. Conversation Time will be determined (a) from actual usage recordings by the Parties or (b) records of terminating traffic provided by the Third Party Provider.

8.2.6 Measuring calls as Local traffic – In order to measure for purposes of calculating reciprocal compensation, the Parties agree as follows: For Pathway, the origination or termination point of a call shall be Pathway's end office which serves, respectively, the calling or called End User. For Nextel, the origination or termination point of a call shall be the cell site sector, which serves, respectively, the calling or called party at the time the call begins.

9.0 Liability and Indemnification.

- 9.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, functions, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the Interconnection, functions, products and services provided by the other Party, its agents, subcontractors, or others retained by such parties.
- 9.2 Each Party shall be indemnified and held harmless by the other Party against claims, losses, suits, demands, damages, costs, expenses, including reasonable attorney's fees ("Claims"), asserted, suffered, or made by third parties arising from (i) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors or (ii) actual or alleged infringement by the indemnifying Party of any patent, trademark, copyright, service mark, trade name, trade secret or intellectual property right (now known or later developed).
- 9.4 Neither Party makes any warranty, express or implied, concerning either Party's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with either Party's right to interconnect. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to either party's intellectual property or contract rights.
- 9.5 Each Party ("Indemnifying Party") shall reimburse the other Party ("Indemnified Party") for damages to the Indemnified Party's equipment, Interconnection trunks and other property utilized to provide Interconnection hereunder caused by the negligence or willful act of the Indemnifying Party, its agents, subcontractors or Customer or resulting from the Indemnifying Party's improper use of the Indemnified Party's equipment, Interconnection trunks or other property. Upon reimbursement for damages, the Indemnified Party will cooperate with the Indemnifying Party in prosecuting a claim against the person causing such damage. The Indemnifying Party shall be subrogated to the right of recovery by the Indemnified Party for the damages to the extent of such payment.

9.6 Indemnification Procedures

- 9.6.1 Whenever a claim shall arise for indemnification, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 9.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 9.6.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 9.6.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such Claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 9.6.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 9.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 9.6.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

- 9.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 9.6.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 9.
- 9.7 Apportionment of Fault. Except for losses alleged or claimed by a Customer of either Party and except as otherwise provided in specific appendices, in the case of any loss alleged or claimed by a third party arising out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this Section shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 9.7.1 The Parties are not liable for any act or omission of other Providers.
- 9.7.2 Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege
- 9.8 No Consequential Damages
- Neither Pathway nor Nextel shall be liable to the other party for any indirect, incidental, consequential, reliance, or special damages suffered by such other party (including, without limitation, damages for harm to business, lost revenues, lost savings, or lost profits suffered by such other party), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence whether active or passive, and regardless of whether the parties knew of the possibility that such damages could result. Each party hereby releases the other party (and such other party's subsidiaries and affiliates and their respective officers, directors, employees and agents) from any such claim.

9.9 Releases

In resolution of the Parties rights, and in further consideration of this Agreement, each Party releases, acquits and discharges the other Party of and from any claim, debt, demand, liability, action or cause of action arising from or relating to the payment of money for the transport and termination of traffic prior to the Effective Date of this Agreement.

10.0 Confidentiality and Proprietary Information

- 10.1 For the purposes of this Agreement, Confidential Information ("Confidential Information") means confidential or proprietary technical or business information given by one Party (the "Discloser") to the other (the "Recipient"). Commencing on the effective date and continuing during and after the termination or expiration of this Agreement, each Party shall be fully responsible for any unauthorized use and disclosure of, and access to, the other Party's Confidential Information. All information which is disclosed by one Party to the other in connection with this Agreement, during negotiations and the term of this Agreement will not be deemed Confidential Information to the Discloser and subject to this Section 9, unless the confidentiality of the information is confirmed in writing by the Discloser prior to disclosure. The Recipient agrees (i) to use Confidential Information only for the purpose of performing under this Agreement, (ii) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (iii) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. Without limiting the foregoing, each Party shall at a minimum employ best industry practice to safeguard the other Party's Confidential Information, whether "at rest" or in transport. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosures and nonuse comparable in scope to the terms of this section.
- 10.2 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 10.3 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement; the Recipient shall certify destruction by written letter to the Discloser. If either Party loses or makes an unauthorized disclosure of the Party's Confidential Information, it will notify such other Party immediately and use its best efforts to retrieve the lost or wrongfully disclosed information.

- 10.4 The Recipient shall have no obligation to safeguard Confidential Information: (i) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (ii) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (iii) after it is rightfully acquired by the Recipient free of restrictions on its discloser; (iv) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, as long as, in the absence of an applicable protective order, the Discloser has been previously notified by the Recipient in time sufficient for the Recipient to undertake all lawful measures to avoid disclosing such confidential information and for Discloser to have reasonable time to seek or negotiate a protective order before or with any applicable mediator, arbitrator, state or regulatory body or a court.
- 10.5 The Parties recognize that an individual End User may simultaneously seek to become or be a Customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from End Users or sources other than the Discloser.
- 10.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 10.7 No license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 10.8 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.
- 11.0 Publicity
- 11.1 The Parties agree not to use in any advertising or sales promotion, press release or other publicity matter any endorsement, direct or indirect quote, or picture implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, and obtain such approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 11.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

12.0 Dispute Resolution

- 12.1 Finality of Disputes - No claims shall be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence which gives rise to the dispute, or beyond the applicable statute of limitations, whichever is shorter.
- 12.2 Except as provided under § 252 of the Act, the Parties desire to resolve any controversies or claims arising out of or relating to this Agreement (individually, a "Dispute") without, to the extent possible, litigation. Accordingly, except for an action seeking either injunctive relief related to the purposes of this Agreement, or to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any Dispute arising out of or relating to this Agreement or its breach.
- 12.3 In the event of any Dispute between Nextel and Pathway as to any provision of this Agreement or the performance or non-performance of obligations hereunder, the matter, upon written request of either Party, shall be referred to representatives of the Parties who will be authorized to settle the dispute. The representatives of the Parties shall meet in a good faith effort to resolve the dispute. Prior to the meeting, the disputing Party shall deliver to the other Party a written summary of the evidence and arguments substantiating its claim.
- 12.4 If a Dispute remains unresolved after thirty (30) calendar days from written notification of said Dispute, either Party shall have the right to commence mediation pursuant to the Commercial Mediation Procedures and Rules of the American Arbitration Association (AAA) which rules shall govern the selection of a mediator and the conduct of the mediation, subject to this Agreement. Unless the Parties mutually agree otherwise, the mediation: (1) will last no longer than one business day; (2) must be attended by a Senior Manager of each Party who may bring counsel and/or other representatives of the Party; and (3) will take place in Reston, Virginia, unless an alternative location is agreed upon by the Parties. Each Party shall bear one-half of the cost of the fees and expenses of the mediation. Each Party shall bear all its own (and their advisors') costs and fees incurred initiating, preparing, and presenting its case with respect to the mediation. If the Dispute is not resolved through mediation, the mediation shall be terminated by a written declaration of the mediator that the dispute has not been resolved.

- 12.5 Either Party may initiate arbitration with respect to a Dispute by filing a written demand for arbitration pursuant to the Wireless Industry Arbitration Rules of the AAA at any time after the thirtieth (30th) calendar day following a request for mediation, or, if earlier, the date mediation is terminated. Mediation may continue after the commencement of arbitration if the Parties so desire. The arbitration shall be governed by the Wireless Industry Arbitration Rules of the AAA, or the Commercial Rules of the AAA, except as set forth herein. Such an arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in Reston, Virginia. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).
- 12.6 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years (confirm this timeframe with business group) after the cause of action accrues.
- 12.7 The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations in accordance with this Agreement.

13.0 Intervening Law

- 13.1 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations, orders or guidelines that subsequently may be prescribed by any federal or state government authority with jurisdiction. To the extent required or permitted by any such subsequently prescribed law, rule, regulation, order or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term or condition of this Agreement to bring them into compliance with such law, rule, regulation, order or guideline. Upon failure to reach agreement to implement a change in laws, rules, regulations, orders or guidelines, either Party may seek arbitration before any regulatory authority with jurisdiction.
- 13.2 Each Party shall comply with all federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

14.0 Miscellaneous Provisions

- 14.1 Effective Date - This Agreement shall be effective upon its execution between the undersigned Parties and is subject to subsequent approval by the Commission. The Parties shall work cooperatively and take all steps necessary and proper to expeditiously prosecute a joint application before the Commission seeking approval of this Agreement pursuant to the provisions of 47 U.S.C. 252. Each Party shall be responsible for its own costs and expenses incurred in obtaining approval of this Agreement from the Commission.
- 14.2 Term and Termination
- 14.2.1 This Agreement shall remain in effect for one (1) year after the Effective Date of this Agreement. The Agreement shall automatically renew for additional six (6) month terms, unless either Party gives the other Party written notice of intent to terminate at least sixty (60) days prior to the expiration date of the initial or renewed term.
- 14.2.2 Upon termination or expiration of this agreement in accordance with this Section:
- 14.2.2.1 Each Party shall continue to comply with its obligations set forth in Section 9.0 Confidentiality and Proprietary Information.
- 14.2.2.2 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and upon termination or expiration of this Agreement, each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement.
- 14.2.2.3 Each Party's indemnification obligations shall survive.
- 14.2.3 If upon expiration or termination either Party requests the negotiation of a successor agreement, during the period of negotiation of the successor agreement each Party shall continue to perform its obligations and provide the services described herein until such time as the successor agreement becomes effective or upon 30 days notice by a Party to cease negotiations.. If the Parties are unable to negotiate a successor agreement within the statutory time frame set for negotiations under the Act, then either Party has the right to submit this matter to the Commission for resolution pursuant to the statutory rules for arbitration under the Act. The rates, term, and conditions applying during the interim period between the termination of this contract and the effective date of the successor contract shall be trued-up to be consistent with the rates, terms and conditions of the successor agreement.
- 14.3 Binding Effect - This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

- 14.4 Assignment - Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned; provided, that either Party may assign its rights and delegate its benefits, and delegate its duties and obligations under this Agreement without the consent of the other Party to a parent, affiliate or subsidiary, or an entity acquiring substantially all of the assets of that Party for the continued provisioning of the telecommunications service under this Agreement.
- 14.5 Third Party Beneficiaries - This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.
- 14.6 Force Majeure - Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable commercial efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.
- 14.7 Disclaimer of Warranties – The Parties make no representations or warranties, express or implied, including but not limited to any warranty as to merchantability or fitness for intended or particular purpose with respect to services or facilities provided hereunder. Additionally, neither Party assumes any responsibility with regard to the correctness of data or information supplied by the other Party when this data or information is accessed and used by a third party.
- 14.8 Survival of Obligations - 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 on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.
- 14.9 Waiver - The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times in full force and effect.

14.10 Patents, Trademarks and Trade Names

- 14.10.1 With respect to claims of patent infringement made by third persons, the Parties shall defend, indemnify, protect, and save harmless the other from and against all claims arising out of the improper combining with or use by the indemnifying Party of any circuit, apparatus, system or method provided by that Party or its subscribers in connection with the Interconnection arrangements furnished under this Agreement.
- 14.10.2 No license under patents is granted by either Party to the other, or shall be implied or arise by estoppel with respect to any circuit, apparatus, system, or method used by either Party in connection with any Interconnection Arrangements or services furnished under this Agreement.
- 14.10.3 Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent prior written consent of the other Party.

14.11 Relationship of the Parties

- 14.11.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.
- 14.11.2 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.
- 14.11.3 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 14.11.4 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

14.11.5 The parties shall comply with all federal, state, and local tax laws applicable to transactions occurring under this Agreement. Each Party shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees, or surcharges levied against or upon such Party. The Providing Party will separately state all taxable and nontaxable charges and all taxes, fees, or surcharges on the original invoice for goods or services provided under this Agreement. All purchases under this agreement are for resale in the ordinary course of Purchasing Party's business. Purchasing Party shall furnish the Providing Party a proper resale tax exemption certificate or other documentation to Providing Party upon request. The parties shall cooperate with one another to minimize taxes arising from this Agreement.

14.11.6 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.

14.12 Services - Each Party is solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.

14.13 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 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.

For Nextel: Nextel Communications, Inc.
2003 Edmund Halley Dr.
Reston, Virginia 20191
(703) 592-2678 - tel
Attn: Bob Edgerly

For Pathway: For Contracts:

Kirk Petty, General Manager
Pathway Com-Tel, Inc.
P.O. Box 1298
Joshua, Texas 76058
(817) 484-2222 - tel.
(817) 4470169 - fax

- 14.14 Expenses - Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
- 14.15 Headings - The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.
- 14.16 Governing Law - The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State of Texas, without reference to conflict of laws provision, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern.
- 14.17 Multiple Counterparts - This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.
- 14.18 Complete Terms - This Agreement together with its appendices constitutes the entire agreement regarding the exchange and compensation for Local Traffic between the Parties and supersedes all prior discussions, representations or oral understandings reached between the Parties. Appendices referred to herein are deemed attached hereto and incorporated by reference. Neither Party shall be bound by any amendment, modification or additional terms unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.
- 14.19 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 14.20 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.
- 14.21 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives.

Pathway Com-Tel, Inc.

Nextel of Texas, Inc.

BY:

Kirk H. Petty
(Signature)

BY:

Steve Sachs
(Signature)

NAME: Kirk Petty

(Printed)

NAME: Steve Sachs

(Printed)

TITLE: General Manager

TITLE: Sr. Director, Telco Cost Management

DATE:

5/13/05

DATE:

May 5, 2005

APPENDIX A

Indirectly Connected Traffic:

- 1.0 Reciprocal compensation for Transport and Termination of traffic exchanged through an indirect connection, per conversation minute of use (MOU):

\$0.010

- 2.0 Transiting Rate Per Minute Of Use \$0.009

- 3.0 To the extent Nextel requires facilities referenced in Section 3.1 (Interconnection Facilities), such facilities will be made available and the rates will be those set forth in the applicable tariff.

- 4.0 Shared Facility Factors

Nextel (Mobile-to-Land)	70%
Pathway (Land-to-Mobile)	30%

- 5.0 Reciprocal compensation for transport and termination of traffic exchanged through an indirect connection per conversation MOU:

\$0.010

- 6.0 When only one of the Parties is able to measure the actual amount of indirectly connected traffic terminating on its network, the Parties agree to assume the following traffic split percentage to calculate the non-recorded usage:

Land-to-Mobile	30%
Mobile-to-Land	70%

Calculation: Assume that Pathway records the termination of 5000 minutes of Mobile-to-Land traffic via an indirect connection:

$5000 \text{ MOUs} / .70 \text{ times } .30 = 2692 \text{ MOUs}$ originated by Pathway to Nextel via indirect connection.

- 7.0 InterMTA Traffic Factor 1%

This initial InterMTA Traffic Factor may be adjusted six months after the effective date of this Agreement and/or each subsequent six month anniversary of the effective date, based upon development and presentation of a traffic study analysis based upon a methodology that provides a reasonable measurement of terminated InterMTA traffic.

APPENDIX B

CARRIER INTERCONNECTION DATA

Pathway Com-Tel, Inc.

Rate Center	Exchange Name	CLLI	Host/Tandem	Local Calling Area, EAS & ELC Exchanges ¹
Burleson	Burleson	BLSNTXBNDS0	FTWOTXED03T	<p>Local: Aledo, Arlington, Azle, Benbrook, Burleson, Crowley, Eagle Mt. Lake, Edgecliff, Euless, Fort Worth, Grapevine, Haslet, Keller, Kennedale, Lake Worth, Mansfield, North Richland Hills, Roanoke, Saginaw, Silver Creek, Wedgewood, Westland, Wheatland, White Settlement</p> <p>EAS: Acton, Alvarado, Cedar Hill, Cleburne, Cresson, DFW Airport, Godley, Granbury, Grand Prairie, Irving, Lewisville, Reno, Rhome, Tolar, Springtown, Weatherford</p> <p>ELC:</p>
Cleburne	Cleburne	BLSNTXBNDS0	FTWOTXED03T	<p>Local: Blum, Cleburne, Covington, Cresson, Glen Rose, Godley, Grandview, Itasca, Kopperl, Lakeside Village, Rio Vista, Venus, Walnut Springs</p> <p>EAS:</p> <p>ELC:</p>

1. Calling scopes are dependent on type of interconnection orders as defined in Section 3.1

ATTACHMENT II

AFFIDAVIT OF KIRK PETTY

STATE OF TEXAS

COUNTY OF JOHNSON

§
§
§

AFFIDAVIT OF KIRK PETTY

BEFORE ME, the undersigned authority, on this 13th day of May, 2005 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 Transport and Termination Agreement and the related attachments (the "Agreement") between Pathway and Nextel. The parties have diligently negotiated culminating in this Agreement.

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

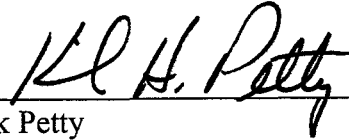
3. The implementation of the Agreement is consistent with the public interest, convenience and necessity.

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.

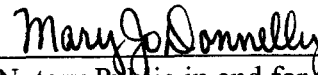
6. I am not aware of any outstanding issues between the parties that need the assistance of mediation or arbitration at this time.

Further, Affiant sayeth not.



Kirk Petty
General Manager
Pathway Com-Tel, Inc.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 13th
day of May, 2005.



Notary Public in and for the State of Texas

My Commission expires on: 5-17-09