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DOCKET NO. 31204

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PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION

OF TEXAS

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
REGARDING AT&T §
COMMUNICATIONS OF TEXAS, §
LP'S ALLEGED VIOLATION OF §
PURA AND/OR COMMISSION §
RULES §

ORDER

This Order reflects that AT&T Communications of Texas, L.P.'s (AT&T's) alleged violations of the Public Utility Regulatory Act¹ (PURA) and/or the Public Utility Commission of Texas (Commission) Substantive Rules related to the above-entitled proceeding are resolved. This docket was processed in accordance with applicable statutes and Commission rules. AT&T and Commission Staff (collectively, Signatories) filed an Agreed Notice of Violation and Settlement Agreement (Settlement Agreement) resolving all of the issues in this proceeding. Consistent with the Signatories' Settlement Agreement, the Commission issues this Order.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. Commission Staff conducted and has concluded an informal investigation of whether certain of AT&T's billing practices, which are more fully described below, violated PURA and/or Commission Substantive Rules, including but not limited to alleged violations of PURA and/or Commission Substantive Rules regarding unauthorized carrier charges (also known as cramming). The Signatories participated in informal discussions regarding AT&T's alleged violations and a recommended amount for an administrative penalty.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2005) (PURA).

2. As a result of the settlement negotiations, the Signatories settled and resolved all issues and customer complaints related to AT&T's imposition of a monthly recurring charge (MRC) that AT&T imposed upon certain Texas consumers beginning on or about January 1, 2004. On May 11, 2005, the Signatories entered into and filed the Settlement Agreement. Pursuant to the terms set forth in the Settlement Agreement, the Signatories request entry of a Commission order consistent with the Settlement Agreement. The Settlement Agreement is included as Attachment 1 to this Order.
3. Consistent with the Settlement Agreement, for purposes of this Order, the following definitions shall apply:
 - a. AT&T means AT&T Communications of Texas, L.P., AT&T Corp., or any other affiliated entity, subsidiary, parent, successor or assign, controlling or controlled by AT&T. AT&T is an interexchange carrier registered with the Commission to provide intrastate interexchange telecommunications services. AT&T is also a local exchange company certificated by the Commission to provide local exchange services;
 - b. "Basic Rate Plan" refers to the state-to-state direct-dialed long distance plan for which AT&T instituted a MRC on or about January 1, 2004;
 - c. "CARE" means Customer Account Record Exchange. CARE is customer account information that is exchanged between a long distance telephone company and certain local exchange carriers that participate in the voluntary CARE process.
 - d. "Clear and conspicuous" means that the required disclosure(s), when made in writing, or via television or the Internet, are presented in such a manner, given their size, color, contrast, and proximity to any related information as to be readily apparent to the person to whom it is being disclosed. Nothing in the definition is intended to prohibit the use of a footnote, super (as in television advertising) or a hyperlink (as in Internet advertising) so long as those disclosures are otherwise clear and conspicuous;

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- e. "Monthly Recurring Charge" or "MRC" refers to a \$3.95 charge that AT&T imposed upon certain long distance customers on or about January 1, 2004;
 - f. "LEC" means Local Exchange Company;
 - g. "PIC" means Primary Interchange Carrier. This term is used to refer to a long distance company that has been selected by the consumer to serve as the consumer's long distance service provider;
 - h. "PUC" means the Public Utility Commission of Texas;
 - i. "Settlement Agreement" means the Agreed Notice of Violation and Settlement Agreement; and
 - j. "Parties" or "Signatories" means AT&T and the Commission Staff, collectively.
4. Consistent with the Signatories' Settlement Agreement, AT&T denies the allegations of the Commission Staff. AT&T does not admit to any violations of PURA or the Commission's Substantive rules or any other state or federal law or rule. This Settlement Agreement was entered into by the Parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation.
5. In consideration of the terms of the Settlement Agreement, the Commission Staff releases AT&T, its subsidiaries, affiliates, successors, employees, officers, directors, and agents from all claims, complaints, demands, suits, actions or causes of action resulting from acts or omissions arising out of the billing of the MRC, or any other matters alleged or which could have been alleged relating to AT&T's imposition of the MRC in Texas, and which occurred on or before the effective date of this Order. This release does not and is not intended, however, to constitute a waiver of the right of the Commission to seek enforcement in a court of competent jurisdiction of AT&T's compliance with the terms contained herein.
6. Consistent with the Signatories' Settlement Agreement, within 90 days of the effective date of the Settlement Agreement, AT&T agrees to comply with the following terms:

- a. AT&T's customer care representatives who speak with a customer regarding their PIC status shall not represent to a consumer that he or she has selected AT&T as his or her PIC or is otherwise assigned to AT&T unless: (a) AT&T has received CARE from a local carrier specifying that the customer selected AT&T long distance service; (b) AT&T determines that there is AT&T toll usage on the customer's line indicating that the customer has selected AT&T as their long distance carrier; or (c) AT&T has obtained from the consumer a written, electronic, or oral authorization pursuant to P.U.C. SUBST. R. 26.130, or according to AT&T's records the consumer selected AT&T as his/her long distance carrier prior to October 21, 2002, the date P.U.C. SUBST. R. 26.130 became effective;
- b. AT&T's customer care representatives who speak with a customer concerning a fee such as an MRC shall be required and instructed by AT&T not to represent to customers that the customer must pay a fee such as an MRC unless and until the customer care representative has first reviewed AT&T's records and verified that such records reflect that the customer in fact owes such fee;
- c. AT&T customer care representatives who speak with a customer shall be required and instructed by AT&T not to represent to these customers that they will be impacted by a price increase such as the MRC unless the customer will in fact be impacted by such prices increases;
- d. AT&T shall not issue a notice of a price increase such as the implementation of an MRC for a specific long distance plan without including in such notice a clear and conspicuous disclosure accurately describing the plan and the terms of the plan affected by the increase;
- e. AT&T shall require its agents to inform all customers who communicate via an electronic, oral or written complaint that they wish to cancel their long distance service of the following:
 - (i) that the customer must contact his or her LEC to request cancellation of his/her AT&T service;
 - (ii) that, absent notification to AT&T from the LEC of the switch or termination, AT&T will remain the customer's long distance carrier; and

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- (iii) that the consumer can obtain information identifying the long distance carrier which he or she selected as his/her PIC by calling 700-555-4141 (or similar number that identifies the customer's long distance carrier).
- f. AT&T shall require agents who provide customers with the information referenced in Finding of Fact No. 6(e), above, to note the customer's complaint or inquiry in the customer's file together with a notation of the date of the inquiry and a notation that the disclosure required by Finding of Fact No. 6(e) was given to the customer;
- g. In all bills that AT&T sends directly to its customers, AT&T shall clearly and conspicuously disclose the mailing address where the customer can send AT&T written complaints or inquiries;
- h. AT&T shall use its best efforts to maintain accurate customer lists and continue to update its customer records by promptly processing the CARE that it receives from LECs that participate in CARE;
- i. Prior to the implementation of any future rate increases affecting Texas customers, AT&T shall adopt and implement reasonable business practices designed to assure that the implementation of such rate increases will not result in customers being billed in error as a result of coding or processing errors in related software systems;
- j. Within 30 days of the date the Commission enters an order approving the Settlement Agreement, AT&T shall re-notify *via* letter all Texas Basic Rate plan customers (as of the effective date of the Settlement Agreement) who are billed the MRC which will advise them of the following:
- (i) that, according to AT&T's records, they are AT&T residential long-distance customers assigned to AT&T's Basic Rate plan;
 - (ii) that AT&T imposes an MRC on Basic Rate plan customers and the amount of the charge;
 - (iii) how to obtain information on other AT&T calling plan options; and
 - (iv) how to disconnect AT&T service if they decide they do not want to continue their AT&T service.

A copy of the letter to be used to comply with Finding of Fact No. 6(j) is attached to the Settlement Agreement as Exhibit 1. The letter must be sent by AT&T via United States First Class mail, and it must contain the following language on the

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outside of the envelope: "Notice of Customer Rights." This language shall be in bold or in red ink and it cannot be written in less than 12-point font;

- k. AT&T shall not report any negative credit information to a credit reporting agency for non-payment or late payment of the MRC for any person who was improperly billed the MRC. AT&T will also take all necessary action to remove and correct negative information that AT&T may have already reported, if any, with respect to such persons;
 - l. AT&T shall not attempt to collect payment of the MRC from any person who was improperly billed the MRC and who has not paid the MRC;
 - m. AT&T shall establish a FAQ (frequently asked question) in the consumer services section of its website that describes the Basic Rate plan and the MRC on this plan.
7. Consistent with the Signatories' Settlement Agreement, AT&T agrees to pay a settlement payment in the amount of one hundred ninety-five thousand and no/100 dollars (\$195,000) as complete satisfaction and settlement of all issues raised by this proceeding. AT&T agrees to remit payment of the full amount of the settlement payment on or before 30 calendar days after the date the Commission issues a final order in this docket. AT&T agrees to tender full payment of the settlement payment in the form of a check or wire transfer payable to the Commission.
8. AT&T has entered into an Assurance of Voluntary Compliance (AVC) with the Attorney General of Texas regarding imposition of the MRC. Consistent with that AVC, the Attorney General shall have and recover a settlement payment from AT&T in the amount of one hundred ninety-five thousand and no/100 dollars (\$195,000), which shall be due and payable as set forth in that AVC.
9. Pursuant to Finding of Fact Nos. 7-8, AT&T binds itself to pay as settlement payments in the aggregate amount of three hundred ninety thousand and no/100 dollars (\$390,000), as full and final settlement of the issues in this docket and in the Assurance of Voluntary Compliance.
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10. Consistent with the Signatories' Settlement Agreement, AT&T has acknowledged that AT&T has processed refunds and bill credits in the amount of \$805,393 for the Texas consumers whom AT&T identified as having been billed the MRC in error.
 11. Consistent with the Settlement Agreement, within 90 days of the date this Order is signed and upon execution by the Signatories of the confidentiality agreement attached to the Settlement Agreement as Exhibit 3, AT&T agrees to submit to the Staff, pursuant to the confidentiality agreement, the following information: (a) the names of the persons who received the refunds and/or credits referenced in Finding of Fact No. 10; (b) the names of the persons to whom AT&T sends the re-notice letter referenced in Finding of Fact No. 10; and (c) the number of persons representing the difference between those to whom AT&T sent the original AT&T written notice and those to whom AT&T sends the re-notice letter referenced in Finding of Fact No. 10.
 12. Consistent with the Signatories' Settlement Agreement, AT&T agrees to be obligated to comply with the remedial measures provided in Finding of Fact No. 6(a), (e), (f), (g), and (m) of this Order for only a period of 18 months and that after such time those measures will terminate.
 13. Consistent with the Settlement Agreement, the Signatories acknowledge that AT&T has entered into an AVC with the State of Texas regarding imposition of the MRC that is substantially similar to this Settlement Agreement. The Signatories do not intend that AT&T is obligated to duplicate any measures imposed by these settlement documents.
 14. This Order fully and finally resolves any and all complaints, claims and/or allegations resulting from acts or omissions arising out of the billing of the MRC, or any other matters alleged or which could have been alleged relating to AT&T's imposition of the MRC in Texas, and which occurred on or before the date of the effective date of this Order.
 15. Consistent with the Settlement Agreement, this docket is resolved and should be dismissed with prejudice.
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16. More than 15 days have passed since completion of notice requirements in this docket.
17. All issues in this proceeding are fully resolved, so that no issues of fact or law are disputed by any party; therefore, no hearing is necessary.

II. Conclusions of Law

1. AT&T is a telecommunications utility as defined in § 51.002 of PURA.
2. The Commission has jurisdiction and authority over this proceeding pursuant to PURA §§ 15.203, 15.207 and 52.002(a).
3. No evidentiary hearing is necessary because there is no genuine issue as to any material fact and no dispositive issue remains in dispute.
4. This proceeding was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.056.
5. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with the findings of fact and conclusions of law, the Commission issues the following Order:

1. The Commission approves the Agreed Notice of Violation and Settlement Agreement attached to this Order as Attachment 1.
 2. Consistent with the Agreed Notice of Violation and Settlement Agreement attached to this Order as Attachment 1, this docket is dismissed with prejudice.
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3. AT&T shall pay a settlement payment to the Commission in the amount of one hundred ninety-five thousand and no/100 dollars (\$195,000.00) on or before the expiration of 30 calendar days following the date this Order is signed.
 4. Consistent with Finding of Fact No. 8, the Attorney General shall have and recover a settlement payment from AT&T in the amount of one hundred ninety-five thousand and no/100 dollars (\$195,000.00), which shall be due and payable as set forth in the AVC.
 5. Within 90 days of the date this Order is signed and upon execution by the Signatories of the confidentiality agreement attached to the Settlement Agreement as Exhibit 3, AT&T will submit to the Staff, the following information: (a) the names of the persons who received the refunds and/or credits referenced in Finding of Fact No. 10; (b) the names of the persons to whom AT&T sends the re-notice letter referenced in Finding of Fact No. 10; and (c) the number of persons representing the difference between those to whom AT&T sent the original AT&T written notice and those to whom AT&T sends the re-notice letter referenced in Finding of Fact No. 10.
 6. The Signatories shall fully comply with the Settlement Agreement and all of the obligations and commitments described in this Order.
 7. Consistent with the Settlement Agreement, all claims, complaints, demands, suits, actions, or causes of action resulting from acts or omissions arising out of the billing of the MRC, or any other matters alleged or which could have been alleged relating to AT&T's imposition of the MRC in Texas, and which occurred on or before the date of this Order are settled, finally resolved, and released.
 8. Entry of this Order does not indicate the Commission's endorsement or approval of any principal or methodology that may underlie the Settlement Agreement. Neither should the entry of an order consistent with the Settlement Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Settlement Agreement.
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9. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the 18th day of July 2005.

PUBLIC UTILITY COMMISSION OF TEXAS



JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY T. SMITHERMAN, COMMISSIONER

PUC DOCKET NO. 31204

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
REGARDING AT&T	§	OF TEXAS
COMMUNICATIONS OF TEXAS, LP'S	§	
ALLEGED VIOLATION PURA AND/OR	§	
COMMISSION RULES		

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT

NOW COME the Legal and Enforcement Division ("LED") of the Public Utility Commission of Texas ("Commission") and AT&T Communications of Texas, L.P., ("AT&T" or the "Company") (collectively referred to herein as "Signatories"), who hereby enter into and agree upon the terms of this Agreed Notice of Violation and Settlement Agreement ("Agreement") based on the Company's alleged violation of the Public Utility Regulatory Act¹ ("PURA") and/or the Commission's Substantive Rules.

I. INTRODUCTION

1.1 WHEREAS, the LED has concluded an informal investigation of whether certain of AT&T's billing practices (more fully described below) violated PURA and/or the Commission's Substantive Rules, including but not limited to alleged violations of the Public Utility Regulatory Act and/or the Commission's Substantive Rules regarding unauthorized carrier charges (also known as "cramming").

1.2 WHEREAS, the Signatories participated in informal discussions regarding AT&T's alleged

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 -64.158 (Vernon 1998 & Supp. 2004).

violations and a recommended amount for an administrative penalty;

1.3 NOW, THEREFORE, the Signatories, through their undersigned representatives, agree to and recommend for approval by the Commission as a means of resolving this docket, the following provisions of this Agreement:

1.4 This Agreement is intended to constitute a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).

1.5 The Signatories agree that the provisions of this Agreement shall be subject to final approval by the Commission by incorporation of such provisions by reference in a final order by the Commission.

1.6 The Signatories agree that this Agreement shall be effective on the date a final order is issued by the Commission. Upon approval, the final order, as well as this Agreement, shall have the same force and effect as any Commission order, and any violation of the terms of this Agreement shall constitute a violation of a Commission order entitling the Commission to exercise any and all rights to seek any and all remedies authorized by law for the enforcement of a Commission order.

1.7 AT&T admits to the jurisdiction of the Commission for purposes of this Agreement and the jurisdiction and authority of the Commission to enter a final order approving this Agreement.

II. DEFINITIONS

2.1 For purposes of this Agreement, the following definitions shall apply:

- A. "AT&T" means AT&T Communications of Texas, L.P., AT & T Corp., or any other affiliated entity, subsidiary, parent, successor or assign, controlling or controlled by AT & T. AT & T is an interexchange carrier registered with the Public Utility

Commission of Texas ("PUC") to provide intrastate interexchange telecommunications services. AT & T is also a local exchange company certificated by the Commission to provide local exchange services;

- B. "Basic Rate Plan" refers to the state-to-state direct-dialed long distance plan for which AT&T instituted a Monthly Recurring Charge ("MRC") on or about January 1, 2004;
- C. "CARE" means Customer Account Record Exchange. CARE is customer account information that is exchanged between a long distance telephone company and ~~certain local exchange carriers that participate in the voluntary CARE process.~~
- D. "Clear and conspicuous" means that the required disclosure(s), when made in writing, or via television or the Internet, are presented in such a manner, given their size, color, contrast and proximity to any related information as to be readily apparent to the person to whom it is being disclosed. Nothing in the definition is intended to prohibit the use of a footnote, super (as in television advertising) or a hyperlink (as in Internet advertising) so long as those disclosures are otherwise clear and conspicuous;
- E. "Monthly Recurring Charge" or "MRC" refers to a \$3.95 charge that AT&T imposed upon certain long distance customers on or about January 1, 2004;
- F. "LEC" means Local Exchange Company;
- G. "PIC" means Primary Interchange Carrier. This term is used to refer to a long distance company that has been selected by the consumer to serve as the consumer's long distance service provider;

- H. "PUC" means the Public Utility Commission of Texas;
- I. "Agreement" means this Agreed Notice of Violation and Settlement Agreement; and
- J. "Parties" means AT&T and the LED, collectively.

III. ALLEGATIONS

3.1 The LED has alleged that AT&T's imposition of the MRC on Texas consumers beginning in or about January 2004 violated PURA and/or the Commission's Substantive Rules, including but not limited to alleged violations of PURA § 17.151 (Requirements for Submitting Charges), and PUC Subst. R. 26.32 (Protection Against Unauthorized Billing Charges ("Cramming")). The LED alleges that the MRC implemented by AT&T failed to:

- a) thoroughly inform the customer of the product or service being offered, including all associated charges,
- b) demonstrate that the customer clearly and explicitly consented to obtain the product or service offered and to have the associated charges appear on the customer's telephone bill, and
- c) verify customer consent.

3.2 The LED has alleged that it received a number of complaints alleging, *inter alia*, that AT&T repeatedly erroneously billed consumers, including: (i) consumers who were not AT&T customers; (ii) consumers who previously had notified AT&T that they wished to cancel their AT&T long distance service; and (iii) consumers who had no billing history with AT&T for an extended period of time. Moreover, some consumers have complained to the LED that when they called AT&T to report billing errors, that AT&T representatives refused or failed to address these problems directly, and/or gave them misinformation about their rights and subjected them to persistent sales pitches. Finally, the State has also alleged that the written notices AT&T sent to consumers prior to the

implementation of the MRC provided insufficient notice of the planned increase.

IV. AT&T'S RESPONSE

4.1 Effective January 1, 2004, AT&T added a \$3.95 MRC to the residential telephone bills of AT&T long distance customers enrolled in Respondent's interstate Basic Rate plan. The MRC was not to be imposed on the following classes of consumers: AT&T residential long distance customers who were enrolled in one of AT&T's other domestic long distance calling plans; AT&T's long distance "Lifeline" plan; or any AT&T local service customer. AT&T alleges that implementation of the MRC did not, in any manner, change the product or the actual service provided to the customer. AT&T further alleges that the changes implemented in January 2004 were solely to the rate of the existing service;

4.2 Prior to implementation of the MRC, AT&T sent written notice to affected customers, posted advance notice on its website, filed a tariff with the Federal Communications Commission, and published a service guide pursuant to its AT&T Consumer Service Agreement;

4.3. Due to coding and systems processing errors, AT&T billed the MRC in error to certain of its residential long distance subscribers as well as to certain consumers who were not AT&T customers. AT&T erroneously billed the MRC charge to approximately 75,000 Texas consumers (about one-quarter of whom were billed the MRC in error due to erroneous CARE data provided to AT&T from the consumers' LEC); and

4.4 AT&T has processed refunds or bill credits for the Texas consumers whom AT&T identified as having been billed the MRC in error. AT&T further sent letters of apology to Texas consumers who were billed the MRC in error and who have received credits or refunds as part of AT&T's

automatic adjustment process for the MRC billing error.

V. STIPULATIONS

5.1 The LED and AT&T agree to and do not contest the entry of this Agreement;

5.2 AT&T denies the allegations of the LED. AT&T does not admit to any violations of the PURA or the Commission's Substantive rules or any other state or federal law or rule. This Agreement is being entered into by the Parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation;

~~**5.3** The corporate signatory hereto is an AT&T officer who is authorized to enter into this Agreement and has read the Agreement and agrees to entry of same; and~~

5.4 In consideration of the terms of this Agreement, the LED releases AT&T, its subsidiaries, affiliates, successors, employees, officers, directors, and agents from all claims, complaints, demands, suits, actions or causes of action resulting from acts or omissions arising out of the billing of the MRC, or any other matters alleged or which could have been alleged relating to AT&T's imposition of the MRC in Texas, and which occurred on or before the date of the effective date of this Agreement. This release does not and is not intended, however, to constitute a waiver of the right of the PUC to seek enforcement in a court of competent jurisdiction of AT&T's compliance with the terms contained herein.

VI. TERMS OF COMPLIANCE

In consideration of this Agreement and in exchange for full settlement of all issues relating to the MRC as described herein, within 90 days of the effective date of this Agreement, AT&T agrees to comply with the following terms:

6.1 AT&T's customer care representatives who speak with a customer regarding their PIC status shall not represent to a consumer that he or she has selected AT&T as his or her PIC or is otherwise assigned to AT&T unless: (1) AT&T has received CARE from a local carrier specifying that the customer selected AT&T long distance service; (2) AT&T determines that there is AT&T toll usage on the customer's line indicating that the customer has selected AT&T as their long distance carrier; or (3) AT&T has obtained from the consumer a written, electronic, or oral authorization pursuant to Substantive Rule 26.130 of the Public Utility Commission of Texas, or according to AT&T's records the consumer selected AT&T as his/her long distance carrier prior to October 21, 2002, the date substantive Rule 26.130 became effective;

6.2 AT&T's customer care representatives who speak with a customer concerning a fee such as an MRC shall be required and instructed by AT&T not to represent to customers that the customer must pay a fee such as an MRC unless and until the customer care representative has first reviewed AT&T's records and verified that such records reflect that the customer in fact owes such fee;

6.3 AT&T customer care representatives who speak with a customer shall be required and instructed by AT&T not to represent to these customers that they will be impacted by a price increase such as the MRC unless the customer will in fact be impacted by such prices increases;

6.4 AT&T shall not issue a notice of a price increase such as the implementation of an MRC for

a specific long distance plan without including in such notice a clear and conspicuous disclosure accurately describing the plan and the terms of the plan affected by the increase;

6.5 AT&T shall require its agents to inform all customers who communicate via an electronic, oral or written complaint that they wish to cancel their long distance service of the following:

(1) that the customer must contact his or her LEC to request cancellation of his/her AT&T service;

(2) that, absent notification to AT&T from the LEC of the switch or termination, AT&T will remain the customer's long distance carrier; and

~~(3) that the consumer can obtain information identifying the long distance carrier~~
which he or she selected as his/her PIC by calling 700-555-4141 (or similar number that identifies the customer's long distance carrier);

6.6 AT&T shall require agents who provide customers with the information referenced in paragraph 6.5, above, to note the customer's complaint or inquiry in the customer's file together with a notation of the date of the inquiry and a notation that the disclosure required by paragraph 6.5 was given to the customer;

6.7 In all bills that AT&T sends directly to its customers, AT&T shall clearly and conspicuously disclose the mailing address where the customer can send AT&T written complaints or inquiries;

6.8 AT&T shall use its best efforts to maintain accurate customer lists and continue to update its customer records by promptly processing the CARE that it receives from LECs that participate in CARE;

6.9 Prior to the implementation of any future rate increases affecting Texas customers, AT&T

shall adopt and implement reasonable business practices designed to assure that the implementation of such rate increases will not result in customers being billed in error as a result of coding or processing errors in related software systems;

6.10 Within 30 days of the Commission entering an order approving this agreement, AT&T shall re-notify via a letter all Texas Basic Rate plan customers (as of the effective date of this Agreement) who are billed the MRC which will advise them of the following:

1. That, according to AT&T's records, they are AT&T residential long-distance customers assigned to AT&T's Basic Rate plan;
2. ~~That AT&T imposes an MRC on Basic Rate plan customers and the amount of the~~ charge;
3. How to obtain information on other AT&T calling plan options; and
4. How to disconnect AT&T service if they decide they do not want to continue their AT&T service.

A copy of the letter to be used to comply with paragraph 6.10 is attached hereto as Exhibit

1. The letter must be sent by AT&T via United States First Class mail, and it must contain the following language on the outside of the envelope: "Notice of Customer Rights." This language shall be in bold or in red ink and it cannot be written in less than 12-point font;

6.11 AT&T shall not report any negative credit information to a credit reporting agency for non-payment or late payment of the MRC for any person who was improperly billed the MRC. AT&T will also take all necessary action to remove and correct negative information that AT&T may have already reported, if any, with respect to such persons;

6.12 AT&T shall not attempt to collect payment of the MRC from any person who was

improperly billed the MRC and who has not paid the MRC; and

6.13 AT&T shall establish a FAQ (frequently asked question) in the consumer services section of its website that describes the Basic Rate plan, and the MRC on this plan.

VII. SETTLEMENT PAYMENT, ATTORNEY FEES, AND CUSTOMER REFUNDS

7.1 AT&T hereby binds itself to pay, and LED agrees to accept, a settlement payment in the amount of One Hundred Ninety-Five Thousand Dollars (\$195,000) as complete satisfaction and settlement of all issues raised by this proceeding. AT&T agrees to remit payment of the full amount of the settlement payment on or before thirty (30) calendar days after the date the Commission issues a final order in this docket.

7.2 AT&T shall tender full payment of the settlement payment in the form of a check or wire transfer payable to the Public Utility Commission of Texas.

7.3 Pursuant to the Assurance of Voluntary Compliance ("AVC") entered into by the Attorney General of Texas and AT&T regarding imposition of the MRC, the Attorney General shall have and recover a settlement payment from AT&T in the amount of One Hundred Ninety-Five Thousand Dollars (\$195,000), which shall be due and payable as set forth in that AVC. A true and correct copy of such AVC is filed under seal as Confidential Exhibit 2.

7.4 Pursuant to paragraphs 7.1, 7.2, and 7.3, AT&T binds itself to pay as settlement payments in the aggregate amount of Three Hundred Ninety Thousand Dollars (\$390,000), as full and final settlement of the issues herein and in the Assurance of Voluntary Compliance.

7.5 The LED and AT&T hereby acknowledge that AT&T has processed refunds and bill credits in the amount of \$805,393 for the Texas consumers whom AT&T identified as having been billed the MRC in error.

7.6 Within 90 days of the date this Agreement is approved by the Commission and upon execution by the Parties of the confidentiality agreement attached hereto as Exhibit 3, AT&T will submit to the LED, pursuant to the confidentiality agreement, the following information: (1) the names of the persons who received the refunds and/or credits referenced in paragraph 7.5 above; (2) the names of the persons to whom AT&T sends the re-notice letter referenced in paragraph 6.10 above; and (3) the number of persons representing the difference between those to whom AT&T sent the original AT&T written notice referenced in paragraph 4.2, above, and those to whom AT&T sends the re-notice letter referenced in paragraph 7.5, above.

VIII. MISCELLANEOUS PROVISIONS

8.1 This Agreement constitutes the full and final resolution of any and all claims and allegations described in this Agreement.

8.2 The Parties agree that AT&T shall be obligated to comply with the remedial measures provided in paragraphs 6.1, 6.5, 6.6, 6.7, and 6.13 of this Agreement for a period of eighteen (18) months after the effective date of this Agreement and that after such time the measures provided in these paragraphs shall terminate and be of no force or effect.

8.3 The Signatories stipulate and agree that any suit arising from this Agreement shall be brought in Travis County, Texas; provided, however, that no suit shall be brought unless or until appropriate administrative remedies have been exhausted, if applicable.

8.4 The Signatories mutually agree that they have entered into this Agreement for their exclusive benefit and the benefit of their respective lawful successors. The Signatories agree that nothing in

this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Signatories and their respective lawful successors.

8.5 The provisions of this Agreement are deemed severable and, if a court of competent jurisdiction or other binding authority deems any provision of this Agreement unenforceable, the remaining provisions shall be valid and enforceable.

8.6 The Signatories contemplate that this Agreement will be approved as required by P.U.C. PROC. R. 22.246(g)(1)(C); however, if the Commission does not approve this Agreement as presented, or issues an interim or final order inconsistent with any term or provision of this Agreement as presented, any Signatory adversely affected by that modification or inconsistency shall have the right to withdraw its consent from this Agreement, thereby becoming released from its commitments and obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. Any party withdrawing its consent shall notify the other party in writing, via first-class United States mail not later than twenty (20) calendar days following the date the Commission issues the interim or final order.

8.7 This Agreement constitutes the entire understanding and agreement between LED and AT&T as to the matters addressed herein, and the Agreement supersedes all other written and oral exchanges or negotiations among the Signatories or their representatives regarding the matters addressed herein.

8.8 Each person executing this Agreement represents that he or she is authorized to sign on behalf of, and to bind, the party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Agreement may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

8.9 The Signatories agree that this Agreement is only binding on each Signatory for the purpose of settling the issues herein and for no other purpose. The Signatories acknowledge and agree that a Signatory's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a settlement agreement, a Signatory is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those proceedings present the same or a different set of circumstances. The Signatories have entered into this Agreement in order to amicably settle the issues and to avoid the substantial time, effort, and expense that would be required if these matters were resolved by a hearing on the merits.

8.10 The Parties acknowledge that AT&T will enter into an Assurance of Voluntary Compliance ("AVC") with the State of Texas regarding imposition of the MRC that is substantially similar to this Agreement (see Confidential Exhibit 2). The Parties do not intend that AT&T is obligated to duplicate any measures imposed by these settlement documents.


WHEREFORE, this Agreement has been executed, approved and agreed to by the Signatories hereto in multiple counterparts, each of which shall be deemed an original, on the date indicated below by the Signatories hereto, by and through their duly authorized representatives. The Signatories request that the Commission enter a final order consistent with this Agreement.

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ENTERED into this 11th day of May 2005.

Public Utility Commission of Texas



Charles E. Johnson
Legal & Enforcement Division
Public Utility Commission of Texas

AT&T Communications of Texas, L.P.

By: 

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