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- 4.8 The rates, terms and conditions of this Agreement shall continue in full force and effect until (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the 161st day after the date on which **AT&T TEXAS** received Carrier's Section 252(a)(1) request, at which time Carrier shall request an interim arrangement pursuant to 51.715 and AT&T shall continue to offer services to Carrier pursuant to the terms, conditions and rates set forth in the interim arrangement. Upon request by Carrier, such interim arrangement shall be Carrier's request to enter into **AT&T TEXAS'** then current interconnection agreement.
- 4.9 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), Carrier withdraws its Section 252(a)(1) request, Carrier must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that Carrier does not wish to pursue a successor agreement with **AT&T TEXAS** for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) Days after the date Carrier serves notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) Day following **AT&T TEXAS'** receipt of Carrier's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall have no further obligations under this Agreement except those set forth in Section 4.5 of this Agreement.
- 4.10 If Carrier does not affirmatively state that it wishes to pursue a successor agreement with **AT&T TEXAS** as provided in Section 4.6 or Section 4.7 above, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) Days after the date Carrier provided or received notice of expiration or termination. Thereafter, the Parties shall have no further obligations under this Agreement except as provided in Section 4.5 above.
- ~~4.124.11 For any Interconnection arrangements covered by this Agreement that may already be in place, the Parties agree that, once this Agreement is deemed effective, the rates contained in Attachment I shall be applied to those arrangements. To the extent that a Party is not able to bill the new rates for the pre-existing Interconnection arrangements on the Effective date, the parties agree that, once billing is possible, the rate will be applied to the pre-existing Interconnection arrangements retroactively to the Effective date of this Agreement.~~
- ~~4.134.12~~ The Parties agree to continue uninterrupted service under this agreement during negotiations of a subsequent agreement. This agreement will continue in effect until the subsequent agreement becomes effective, subject to Section 4.3.

5. ASSURANCE OF PAYMENT

- 5.1 Upon request by **AT&T TEXAS**, ~~CMRS Provider and only after~~ **AT&T TEXAS** can provide a good faith projection of a likely monthly bill of greater than \$20,000, Carrier will provide **AT&T TEXAS** with the **AT&T TEXAS** Credit Profile form and provide information to **AT&T TEXAS** regarding ~~CMRS Provider's~~ Carrier's credit and financial condition ~~for the projected amount of the monthly bill.~~
- 5.1.1 If Carrier disagrees with the **AT&T TEXAS** projected likely monthly bill, the parties shall in good faith agree to detail the line items of the bill.
- 5.2 Assurance of payment via a Cash Deposit, Letter of Credit or Surety Bond may be requested by **AT&T TEXAS** if and only when the Parties employ Direct Interconnection and under the following circumstances:

- 5.2.1 If the monthly projected bill to Carrier is greater than \$20,000 and based on AT&T TEXAS's analysis of the AT&T TEXAS Credit Profile and other relevant information regarding CMRS Provider's Carrier's credit and financial condition, there is an impairment of the credit, financial health, or credit worthiness of CMRS Provider Carrier. Such impairment will be determined from information available from Third Party financial sources; or
- 5.2.2 CMRS Provider Carrier fails to timely pay a bill rendered to CMRS Provider Carrier by AT&T TEXAS (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CMRS Provider Carrier has complied with all requirements set forth in Section 8.4 below); and/or
- 5.2.3 CMRS Provider's Carrier's gross monthly billing has increased, AT&T TEXAS reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in CMRS Provider's Carrier's "accounts receivables and proceeds"; or
- 5.2.4 When CMRS Provider Carrier admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 5.3 If AT&T TEXAS requires CMRS Provider Carrier to provide a security deposit, CMRS Provider pursuant to this section, Carrier shall provide such security deposit prior to the inauguration of service or within fifteen (15) calendar days of AT&T TEXAS' request, as applicable. Deposit request notices will be sent to CMRS Provider Carrier via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in AT&T TEXAS' applicable tariff.
- 5.4 Unless otherwise agreed by the Parties, the assurance of payment will consist of:
- 5.4.1 a Cash Deposit; or
- 5.4.2 a Letter of Credit; or
- 5.4.3 a Surety Bond.
- 5.5 The Cash Deposit, Letter of Credit or Surety Bond must be in an amount up to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by AT&T TEXAS, for the Interconnection product and/or services, and Collocation or any other functions, facilities, products and/or services to be furnished by AT&T TEXAS under this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if CMRS Provider Carrier has received service from AT&T TEXAS during such period at a level comparable to that anticipated to occur over the next six (6) months. If either CMRS Provider Carrier or AT&T TEXAS has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, CMRS Provider Carrier and AT&T TEXAS shall agree on a level of estimated billings based on all relevant information.

- 5.6 ~~To the extent that AT&T TEXAS elects to require~~ Carrier provides a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 5.7 Interest on a Cash Deposit shall accrue and be applied or refunded in accordance with the terms in the applicable **AT&T TEXAS** state tariff. **AT&T TEXAS** will not pay interest on a Letter of Credit or a Surety Bond.
- 5.8 **AT&T TEXAS** may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 5.8.1 ~~CMRS Provider~~ Carrier owes **AT&T TEXAS** undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 5.8.2 ~~CMRS Provider~~ Carrier admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 5.8.3 The expiration or termination of this Agreement.
- 5.9 If **AT&T TEXAS** draws on the Letter of Credit or Cash Deposit, upon request by **AT&T TEXAS**, ~~CMRS Provider~~ Carrier will provide a replacement or supplemental Letter of Credit, Surety Bond or Cash Deposit conforming to the requirements of Section 5.4 above.
- 5.10 Notwithstanding anything else set forth in this Agreement, if **AT&T TEXAS** makes a request for assurance of payment in accordance with the terms of this Section 5.0 then **AT&T TEXAS** shall have no obligation thereafter to perform under this Agreement until such time as ~~CMRS Provider~~ Carrier has furnished **AT&T TEXAS** with the assurance of payment requested; provided, however, that **AT&T TEXAS** will permit ~~CMRS Provider~~ Carrier a minimum of fifteen (15) calendar days to respond to a request for assurance of payment before invoking charges as set forth in this Section 5.0.
- 5.11 In the event ~~CMRS Provider~~ Carrier fails to provide **AT&T TEXAS** with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to ~~CMRS Provider~~ Carrier may be suspended, discontinued or terminated in accordance with the terms of this Section. Upon termination of services, **AT&T TEXAS** shall apply any security deposit to ~~CMRS Provider's~~ Carrier's final bill for its account(s). If ~~CMRS Provider~~ Carrier fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, **AT&T TEXAS** may also invoke the provisions set forth in Section 9.0 below.
- 5.12 A Cash Deposit held by **AT&T TEXAS** shall be returned to ~~CMRS Provider~~ Carrier if the following conditions have been met:
- 5.12.1 Payment was made on bills rendered to ~~CMRS Provider~~ Carrier by **AT&T TEXAS** (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which ~~CMRS Provider~~ Carrier has complied with all requirements set forth in Section 8.4 below) as of the Bill Due Date for all but one time during the prior twelve (12) month period and all payments were made with checks that were honored; and
- 5.12.2 There has been no impairment of the established credit and/or financial health from information available from financial sources, including but not limited to Moody's, Standard and

Poor's, and the Wall Street Journal. Financial information about CMRS ProviderCarrier that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems.

- 5.13 The fact that a Cash Deposit or Letter of Credit is requested by **AT&T TEXAS** shall in no way relieve CMRS ProviderCarrier from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.
- 5.14 At least seven (7) calendar days prior to the expiration of any Letter of Credit provided by CMRS ProviderCarrier as security under this Agreement, CMRS ProviderCarrier shall renew such Letter of Credit or provide **AT&T TEXAS** with evidence that CMRS ProviderCarrier has obtained a suitable replacement for the Letter of Credit. If CMRS ProviderCarrier fails to comply with the foregoing, **AT&T TEXAS** shall thereafter be authorized to draw down the full amount of such Letter of Credit and utilize the cash proceeds as security for CMRS ProviderCarrier account(s). If CMRS ProviderCarrier provides a security deposit or additional security deposit in the form of a Surety Bond as required herein, CMRS ProviderCarrier shall renew the Surety Bond or provide **AT&T TEXAS** with evidence that CMRS ProviderCarrier has obtained a suitable replacement for the Surety Bond at least seven (7) calendar days prior to the cancellation date of the Surety Bond. If CMRS ProviderCarrier fails to comply with the foregoing, **AT&T TEXAS** shall thereafter be authorized to take action on the Surety Bond and utilize the cash proceeds as security for CMRS ProviderCarrier's account(s). If the credit rating of any bonding company that has provided CMRS ProviderCarrier with a Surety Bond provided as security hereunder has fallen below "B", **AT&T TEXAS** will provide written notice to CMRS ProviderCarrier that CMRS ProviderCarrier must provide a replacement bond or other suitable security within fifteen (15) calendar days of **AT&T TEXAS's** written notice. If CMRS ProviderCarrier fails to comply with the foregoing, **AT&T TEXAS** shall thereafter be authorized to take action on the Surety Bond and utilize the cash proceeds as security for CMRS ProviderCarrier's account(s). Notwithstanding anything contained in this Agreement to the contrary, **AT&T TEXAS** shall be authorized to draw down the full amount of any Letter of Credit or take action on any Surety Bond provided by CMRS ProviderCarrier as security hereunder if CMRS ProviderCarrier defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein.

6. BILLING AND PAYMENT OF CHARGES

6.1 Charges and Payment

- 6.1.1 Each Party agrees to pay the other all undisputed billed amounts by the earlier of (i) the payment date, which may be set no earlier than thirty (30) Days after the bill date, or (ii) the next bill date (i.e., the same date in the following month as the bill date) (Payment Due Date). The undisputed portions of all bills are to be paid when due. All non-usage-sensitive monthly charges, Facility and Serving Arrangements shall be billed by **AT&T TEXAS** monthly in advance, except those charges due for the initial month, or a portion of the initial month during which new items are provided, will be included in the next bill rendered. If the date on which a bill is due as provided above is on a Day other than a Business Day, payment will be made on the next Business Day. Payments will be made in U.S. dollars.
- 6.1.2 ~~On~~Only if the disputed amount is less than \$20,000, on or before the Payment -Due Date, the Non-Paying Party must pay all Disputed Amounts into an interest bearing escrow account with

a Third Party escrow agent as set forth in Section 7 that is mutually agreed upon by the Parties (Escrow Account).

- 6.1.3 The Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment or escrow of any of the unmet obligations within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, in addition to exercising any other rights or remedies it may have under Applicable Law, the Billing Party may also exercise any or all of the following options:
- 6.1.3.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection under this Agreement;
- 6.1.3.2 and/or suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection Service under this Agreement.

6.1.4 Escrow requirements apply only to Disputed Amounts related to charges for Facilities and Trunks associated with Direct Interconnection. Given that intraMTA traffic is bill and keep, the volume of intraLATA interMTA traffic is expected to be low, interLATA interMTA traffic is subject to AT&T Texas' access tariffs and access charges themselves are transitioning to bill and keep there shall be no escrow requirement for usage-sensitive charges under this Interconnection agreement.

6.1.4.6 Usage-sensitive charges hereunder shall be billed monthly in arrears by both Parties.

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6.2 Late Payment Charge

- 6.2.1 Bills will be considered past due if not paid by the Payment Due Date in immediately available U.S. funds. If the amount billed is received by the billing Party after the Payment Due Date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance. The late payment charge will be as set forth in AT&T TEXAS' applicable state tariff. When there is no applicable tariff in the State, any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the number of Days from the Payment Due Date to and including the date that payment is actually made.

6.3 Backbilling

- 6.3.1 Charges for any service or product provided pursuant to this Agreement may be billed by the billing Party for up to one (1) year~~month~~ after the initial date such service or product was furnished. This Section shall not apply to backbilling that would be appropriate where changes are not evident other than through an audit pursuant to Audit provisions of this Agreement.

6.4 Backcredits

- 6.4.1 Neither Party may request credit for any billing by the other Party pursuant to this Agreement more than one (1) year after the date of the bill on which the service or product was billed. Any such request will be in writing and contain sufficient detail to allow the other Party to properly investigate the request. If the request for credit leads to a billing dispute, such dispute shall be handled in accordance with Section 9, Dispute Resolution. This Section shall not apply to requests for credit in the following situations: when the true-ups are provided for in

this Agreement, or where changes are not evident other than through an audit pursuant to Audit provisions of this Agreement.

6.5 Tariffed Items

- 6.5.1 Where charges in this Agreement are specifically identified as tariffed rates, then those charges and those alone shall be deemed amended to conform to any authorized modifications that may hereafter occur to those tariffed rates. Such amendments shall become effective upon the effective date of tariff modification.

6.6 Invoices

- 6.6.1 Invoices shall comply with nationally accepted standards agreed upon by the Ordering and Billing Forum (OBF) for billing ~~access traffic~~ Non-Access Traffic and ~~Reciprocal Compensation traffic~~ Access Traffic.

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- 6.6.2 Parties agree that each will perform the necessary call recording and rating for its respective portions of an exchanged call in order to invoice the other Party.
- 6.6.3 Invoices between the Parties shall include, but not be limited to the pertinent following information.

Identification of the monthly bill period (from and through dates)

Current charges

Past due balance

Adjustments

Credits

Late payment charges

Payments

Contact telephone number for billing inquiries

- 6.6.4 The Parties will provide a remittance document with each invoice identifying:

Remittance address

Invoice number and/or billing account number

Summary of charges

Amount due

Payment Due Date (at least thirty (30) Days from the invoice date)

- 6.6.5 Invoices between the Parties will be provided on paper and will be the primary bill, unless a mechanized format is mutually agreed upon and subsequently designated in writing by both Parties as the primary bill.

- 6.6.6 Inter-carrier Compensation invoices will be based on Conversation MOUs for all Completed Calls and are measured in total conversation time seconds, which are totaled (by originating and terminating CLLI code) for the monthly billing cycle and then rounded up to the next whole minute. When AT&T TEXAS is unable to invoice reflecting an adjustment for shared Facilities and/or Trunks, Carrier will separately invoice AT&T TEXAS for AT&T TEXAS' share of the cost of such Facilities and/or Trunks as provided in this Agreement thirty (30) Days following receipt by Carrier of AT&T TEXAS' invoice.

- 6.6.7 ~~Carrier will invoice AT&T TEXAS for Inter-carrier Compensation by state, based on the terminating location of the call. Carrier will display the CLLI code(s) associated with the Trunk through which the exchange of traffic between AT&T TEXAS and Carrier takes place as well as the number of calls and Conversation MOUs for each inbound Facility route. AT&T TEXAS will invoice Carrier for Inter-carrier Compensation by LATA and by the End Office/Tandem Switch, based on the terminating location of the call and will display and summarize the number of calls and Conversation MOUs for each terminating office~~

- 6.7 There will be no netting by the billed Party of payments due herein against any other amount owed by one Party to the other.

7. Requirements to Establish Escrow Accounts:

- 7.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 7.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
 - 7.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
 - 7.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.
- 7.2 In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
- 7.2.1 The escrow account must be an interest bearing account;
 - 7.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;
 - 7.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
 - 7.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
 - 7.2.5 disbursements from the escrow account will be limited to those:
 - 7.2.5.1 authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or
 - 7.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 9.8 below; or
 - 7.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 9.8 below.

8. ~~Nonpayment and Procedures for Disconnection~~

- ~~8.1 If a Party is furnished Interconnection products and/or services under the terms of this Agreement in more than one (1) state, language in Section 8.2 below through Section 8.9 below inclusive, shall be applied separately for each such state.~~
- ~~8.2 Failure to pay charges and/or place into the Escrow Account disputed unpaid charges shall be grounds for disconnection of Interconnection products and/or services furnished under this Agreement. If a Party fails to pay any unpaid charges billed to it under this Agreement, including but not limited to any Late Payment Charges or place into the Escrow Account all Disputed Amounts including any Late Payment Charges, and any portion of such unpaid charges remain unpaid after the Payment Due Date, the Billing Party may send a Discontinuance Notice to such Non-Paying Party. The Non-Paying Party must remit all unpaid charges, excluding Disputed Amounts, to the Billing Party within fifteen (15) calendar days of the Discontinuance Notice.~~
- ~~8.3 AT&T TEXAS will also provide any written notice of disconnection to any Commission as required by any State Order or Rule.~~
- ~~8.4 If the Non-Paying Party desires to dispute any portion of the unpaid charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's discontinuance notice:~~

- 8.4.1 ~~notify the Billing Party in writing which portion(s) of the unpaid charges it disputes, including the total Disputed Amounts and the specific details listed in Section 9.4 below of this Agreement, together with the reasons for its dispute; and~~
- 8.4.2 ~~pay all undisputed unpaid charges to the Billing Party; and~~
- 8.4.3 ~~pay all Disputed Amounts into an interest bearing escrow account that complies with the requirements set forth in Section 7 above; and~~
- 8.4.4 ~~furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 7 above and deposited a sum equal to the Disputed Amounts into that account. Until evidence that the full amount of the Disputed Charges has been deposited into an escrow account that complies with Section 6 above is furnished to the Billing Party, such unpaid charges will not be deemed to be "disputed" under Section 9.0 below.~~
- 8.5 ~~Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the dispute resolution provision set forth in Section 8.0 below.~~
- 8.6 ~~If the Non-Paying Party fails to:~~
- 8.6.1 ~~pay any undisputed unpaid charges in response to the Billing Party's Discontinuance Notice as described in Section 8.2 above.~~
- 8.6.2 ~~deposit the disputed portion of any unpaid charges into an interest bearing escrow account that complies with all of the terms set forth in Section 7 above within the time specified in Section 8.2 above.~~
- 8.6.3 ~~timely furnish any assurance of payment requested in accordance with Section 5.0 above; or~~
- 8.6.4 ~~make a payment in accordance with the terms of any mutually agreed payment arrangement; the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in the above Sections 8.6.1, 8.6.2, 8.6.3 and 8.6.4 within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:~~
- 8.6.4.1 ~~suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection under this Agreement;~~
- 8.6.4.2 ~~and/or suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection Service under this Agreement.~~
- 8.7 ~~Where required, a copy of the demand provided to CMRS Provider under Section 8.6 will also be provided to the Commission at the same time.~~
- 8.8 ~~Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 8.6 above, and Sections 8.6.4.1 above and 8.6.4.2 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Payment Due Date; and~~
- 8.9 ~~For AT&T TEXAS, if the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 8.6 above of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law:~~
- 8.9.1 ~~cancel any pending application, request or order for new or additional Interconnection products and/or services and network elements, under this Agreement; and~~
- 8.9.2 ~~disconnect any interconnection products and/or services furnished under this Agreement.~~
- 8.9.3 ~~Discontinue providing any Interconnection products and/or services furnished under this Agreement.~~

9. DISPUTE RESOLUTION

9.1 Finality of Disputes

- 9.1.1 Unless otherwise agreed, no non-billing related Claims will be brought for disputes arising under this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. No Claims subject to Billing Dispute Resolution, Section 9.4, will be brought for disputes arising under this Agreement more than twelve (12) months from the Payment Due Date of the invoice giving rise to the dispute. Claims involving withheld amounts are subject to Section 9.4.

9.2 Alternative to Litigation

- 9.2.1 The Parties shall resolve disputes arising out of this Agreement, using the following Dispute Resolution procedure with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.

9.3 Commencing Dispute Resolution

- 9.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or Claim arising out of or relating to this Agreement or its breach. No Party may pursue any Claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:
- 9.3.1.1 Billing Dispute Resolution;
 - 9.3.1.2 Informal Dispute Resolution; and
 - 9.3.1.3 Formal Dispute Resolution.

9.4 Billing Dispute Resolution

- 9.4.1 The following Dispute Resolution procedures will apply with respect to any disputed amounts invoiced pursuant to or relating to the Agreement ("Disputed Amounts").
- 9.4.2 Any notice of Disputed Amounts given by either Party shall be referred to the appropriate billing department of the other Party.
- 9.4.3 A Party with a bona fide dispute regarding any amounts invoiced ("Disputing Party") shall provide written notice of Disputed Amounts to the other Party ("Notice of Disputed Amounts").
- 9.4.4 The Notice of Disputed Amounts shall contain the following: (i) the date of the invoice in question, (ii) the account number or other identification of the invoice in question, (iii) the circuit ID number or Trunk number in question, (iv) any USOC (or other descriptive information) in question, (v) the amount invoiced, (vi) the amount in dispute, (vii) the basis of the dispute and (viii) supporting actual data for an agreed upon limited period within the dispute timeframe to support investigation and resolution.
- 9.4.5 Failure to timely provide the Notice of Disputed Amounts (including the required information and documentation) shall constitute the Disputing Party's irrevocable and full waiver of its dispute pertaining to the subject Disputed Amounts, and such withheld amounts shall be deemed past due, and late payment charges shall apply.
- 9.4.5.1 The Parties shall attempt to resolve Disputed Amounts regarding fully paid invoices within ninety (90) Days of the invoicing Party's receipt of Notice of Disputed Amounts, but resolution may take longer depending on the complexity of the dispute. However, if the dispute is not resolved within the first forty-five (45) Days of such ninety-(90) Day period, upon request, the invoicing Party shall advise the Disputing Party of the status of the dispute and the expected resolution date.
- 9.4.6 Resolution of the dispute is expected to occur at the first level of management, resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the

issues are not resolved within the allotted time, the following resolution procedure will be implemented:

- 9.4.6.1 If the dispute is not resolved within sixty (60) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.
- 9.4.6.2 If the dispute is not resolved within ninety (90) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.
- 9.4.6.3 If the dispute is not resolved within one hundred and twenty (120) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.
- 9.4.6.4 Each Party will provide to the other Party an escalation list for resolving billing disputes. The escalation list will contain the name, title, phone number, and email address for each escalation point identified in this section 9.4.6.
- 9.4.6.5 Either Party may invoke Informal Resolution of Disputes upon written notice ("Informal Dispute Resolution Notice") received by the other Party within ten (10) Business Days after the expiration of the time frames contained in Sections 9.4.6.1 and 9.4.6.2; however, the Parties may, by mutual agreement, proceed to Informal Resolution of Disputes at any time during such time frames.

9.5 Informal Resolution of Disputes

- 9.5.1 Upon a Party's receipt of an Informal Dispute Notice, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the prior written concurrence of both Parties. Documents identified in or provided with such communications, not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in an arbitration or lawsuit.

9.6 Formal Dispute Resolution

- 9.6.1 If the Parties are unable to resolve the dispute through the informal procedure described above in Section 9.5, then either Party may invoke the following Formal Dispute Resolution procedures by submitting to the other Party a written demand for arbitration ("Arbitration Notice"). Unless agreed upon by the Parties, Formal Dispute Resolution procedures described below, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) Days after receipt of the Informal Dispute Resolution Notice.

9.7 Claims Subject to Arbitration.

- 9.7.1 Claims, if not settled through Informal Dispute Resolution, will be subject to arbitration pursuant to Section 9.7.2 below:
- 9.7.2 Claims Subject to Arbitration. All Claims will be subject to arbitration if, and only if, the Claim is not settled through Informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

- 9.7.3 Claims Not Subject to Arbitration. If the following Claims are not resolved through Informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.
 - 9.7.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.
 - 9.7.3.2 Actions to compel compliance with the Dispute Resolution process.
 - 9.7.3.3 All claims arising under federal or state statute(s), including antitrust claims.
- 9.8 Arbitration
 - 9.8.1 Disputes subject to arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree.
 - 9.8.2 The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes.
 - 9.8.3 Each arbitration will be held in Dallas, Texas as appropriate, unless the Parties agree otherwise.
 - 9.8.4 The arbitrator shall be knowledgeable of telecommunications issues.
 - 9.8.5 The arbitrator will control the scheduling so as to process the matter expeditiously.
 - 9.8.6 The arbitration hearing will be requested to commence within sixty (60) Days of the demand for arbitration.
 - 9.8.7 The times specified in this Section 9.8 may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause.
 - 9.8.8 The Parties may submit written briefs upon a schedule determined by the arbitrator.
 - 9.8.9 The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) Days after the close of hearings.
 - 9.8.10 The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement.
 - 9.8.11 Each Party will bear its own costs of these procedures, including attorneys' fees.
 - 9.8.12 The Parties will equally split the fees of the arbitration and the arbitrator.
 - 9.8.13 The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof.
 - 9.8.14 Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- 9.9 Resolution of Billing Disputes
 - 9.9.1 The following provisions apply specifically to the resolution of Billing disputes.
 - 9.9.1.1 When Billing disputes are resolved in favor of the Disputing Party, the following will occur within thirty (30) Days:
 - 9.9.1.2 Interest will be paid by the invoicing Party on any amounts paid in excess of the amount found to be due according to the Billing Dispute Resolution from the date of Notice of Disputed Amounts.
 - 9.9.1.3 Payments made in excess of the amount found to be due according to the Billing Dispute Resolution will be reimbursed by the invoicing Party.

- 9.9.2 When Billing disputes are resolved in favor of the invoicing Party, the following will occur within thirty (30) Days:
- 9.9.2.1 Late payment charges calculated from the Payment Due Date through date of remittance will be paid by the Disputing Party on any amount not paid that was found to be due according to the Billing Dispute Resolution.
 - 9.9.2.2 Any amounts not paid but found to be due according to the Billing Dispute Resolution will be paid to the invoicing Party.
 - 9.9.2.3 Failure by a Party to pay any charges determined to be owed within the applicable time period specified above shall be considered a failure to perform a material obligation or a breach of a material term of this Agreement.

10. AUDITS

- 10.1 Subject to the restrictions set forth in Section 18 and except as may be otherwise expressly provided in this Agreement, upon thirty (30) days written notice a Party (the "Auditing Party") may audit the other Party's (the "Audited Party") books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement, but not for a period longer than twelve months ("service start date") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder.
- 10.1.1 The scope of the audit shall be limited to the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) Days after Audited Party receives a written notice requesting an audit and shall be completed no later than one-hundred twenty (120) Days after the start of such audit.
 - 10.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
 - 10.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours or through mutual exchange of data requested. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End Users of Audited Party.
 - 10.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twelve (12) months after creation thereof, unless a longer period is required by Applicable Law.
 - 10.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 6.2.1, for the number of Days from the

date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

- 10.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 10.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) Days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 10.1. Any additional audit shall be at the requesting Party's expense.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 11.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, FUNCTIONS, FACILITIES, NETWORK ELEMENTS, PRODUCTS AND SERVICES IT PROVIDES OR MAY PROVIDE UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PARTY TO THIS AGREEMENT ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

12. LIMITATION OF LIABILITY

- 12.1 Except for indemnity obligations expressly set forth herein or as otherwise provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement (including any negligent act or omission, whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute (including the Act), shall not exceed in total the amount AT&T TEXAS or Carrier has charged or would have charged to the other Party for the affected Interconnection, Network Elements, functions, Facilities, products and/or service(s) that were not performed or did not function or were improperly performed or improperly functioned.
- 12.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or Claimed by a Third Party to have arisen out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) 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.
- 12.3 A Party may, in its sole discretion, provide in its tariffs and/or contracts with its End Users or Third Parties that relate to any Interconnection, Network Elements, functions, Facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, Network Elements, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other

Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and/or contracts the limitation(s) of liability described in this Section 12.3.

- 12.4 Neither Carrier nor **AT&T TEXAS** shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 14 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 12.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection, Network Elements, functions, Facilities, products and services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and Indemnitee's and Indemnitee's Affiliates' respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 12.5 This Section 12 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of agreed liability and the type of damages that are recoverable. The Parties acknowledge that the above limitation of liability provisions are negotiated and alternate limitation of liability provisions would have altered the cost, and thus the price, of providing the Interconnection, Network Elements, functions, Facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability were agreed.

13. Joint and Several Liability

- 13.1 In the event that a Party consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using a Party to this Agreement's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of such Party under this Agreement.

14. INDEMNITY

- 14.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Network Elements, functions, products, Facilities, 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, Network Elements, functions, Facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 14.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Network Elements, functions, Facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

- 14.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by such End User regardless of whether the underlying Interconnection, Network Elements, function, Facilities, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 14.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any Claim or Loss arising from the Indemnifying Party's use of Interconnection, functions, Facilities, products and services provided under this Agreement involving:
- 14.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Network Elements, functions, Facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.
- 14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Network Elements, functions, Facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Interconnection, Network Elements, functions, Facilities, products or services provided pursuant to this Agreement.
- 14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Network Elements, functions, Facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:
- 14.4.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Network Elements, functions, Facilities, products or services provided under this Agreement; and
- 14.4.1.2.2 no infringement would have occurred without such modification.
- 14.4.2 **AT&T TEXAS** hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning Carrier's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection in **AT&T TEXAS'** network or Carrier's use of other functions, Facilities, products or services furnished under this Agreement.
- 14.4.3 **AT&T TEXAS** does not and shall not indemnify, defend or hold Carrier harmless, nor be responsible for indemnifying or defending, or holding Carrier harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to Carrier's Interconnection with **AT&T TEXAS'** network or Carrier's use of other functions, Facilities, products or services furnished under this Agreement.
- 14.5 Damage to Facilities.
- 14.5.1 Carrier shall reimburse **AT&T TEXAS** for damages to **AT&T TEXAS'** Facilities utilized to provide Interconnection hereunder caused by the negligence or willful act of Carrier, its agents or subcontractors or Carrier's End User or resulting from Carrier's improper use of **AT&T TEXAS'** Facilities, or due to malfunction of any Facilities, functions, products, services or equipment provided by any Person or entity other than **AT&T TEXAS**. Upon reimbursement for damages, **AT&T TEXAS** will cooperate with Carrier in prosecuting a Claim against the

Person causing such damage. Carrier shall be subrogated to the right of recovery by **AT&T TEXAS** for the damages to the extent of such payment.

- 14.5.2 **AT&T TEXAS** shall reimburse Carrier for damages to Carrier's Facilities utilized to provide Interconnection hereunder caused by the negligence or willful act of **AT&T TEXAS**, its agents or subcontractors or **AT&T TEXAS'** End User or resulting from **AT&T TEXAS'** improper use of Carrier's Facilities. Upon reimbursement for damages, Carrier will cooperate with **AT&T TEXAS** in prosecuting a Claim against the Person causing such damage. **AT&T TEXAS** shall be subrogated to the right of recovery by Carrier for the damages to the extent of such payment.

14.6 Indemnification Procedures

- 14.6.1 Whenever a Claim shall give rise to indemnification obligations under this Section 14, 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.
- 14.6.2 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.
- 14.6.3 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 reasonable 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.
- 14.6.4 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.
- 14.6.5 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.
- 14.6.6 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.
- 14.6.7 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.
- 14.6.8 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.

- 14.6.9 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 18, "Confidentiality".

15. INTELLECTUAL PROPERTY

- 15.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.
- 15.2 Except as otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

16. NOTICES

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

- 16.1.1 delivered personally, delivered by express delivery service or mailed via certified mail or first class U.S. Postal Service, with postage prepaid and a return receipt requested.
- 16.1.2 delivered by facsimile provided Carrier and/or AT&T TEXAS has provided such information in Section 16.3 below.
- 16.1.3 delivered by electronic mail (email) provided Carrier and/or AT&T TEXAS has provided such information in Section 16.3 below.

- 16.2 Notices will be deemed given as of the earliest of:

- 16.2.1 the date of actual receipt;
- 16.2.2 the next Business Day when sent via express delivery service;
- 16.2.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or
- 16.2.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.
- 16.2.5 notice by email shall be effective on the date it is officially recorded as delivered by delivery receipt and in the absence of such record of delivery, it shall be presumed to have been delivered on the date sent to Carrier by AT&T TEXAS.

- 16.3 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CARRIER CONTACT
NAME/TITLE	Lowell Feldman<<txtNoticeName>> CEO - Worldcall Interconnect Inc. <<txtNoticeTitle>>
STREET ADDRESS	1250 South Capital of Texas Highway, Building 2-235<<txtNoticeAddress1>>

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CITY, STATE, ZIP CODE	Westlake Hills, Texas 78746<<txtNoticeCity>>, <<cbxNoticeState>> <<txtNoticeZip>>
PHONE NUMBER*	512-888-2311<<txtNoticePhone>>
FACSIMILE NUMBER	<<txtNoticeFax>>
EMAIL ADDRESS	Lowell.feldman@gmail.com<<txtCXREmail>>

NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard St., 19th Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Dallas, TX 75202-5398
FACSIMILE NUMBER	(214) 464-2006
EMAIL ADDRESS	The current email address as provided on AT&T's CLEC Online website

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

- 16.4 Either Party may unilaterally change its designated contact name, address, email address, and/or facsimile number for the receipt of Notices by giving written Notice to the other Party in compliance with this Section 16.0. Unless explicitly stated otherwise, any change to the designated contact name, address, email address, and/or facsimile number will replace such information currently on file. Any Notice to change the designated contact name, address, email address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.
- 16.5 ~~AT&T TEXAS communicates official information to Carriers via its Accessible Letter, or other applicable, notification processes. These processes involve electronic transmission and/or posting to the AT&T Prime Access website, inclusive of a variety of subjects including declaration of a force majeure, changes on business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.~~

17. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

- 17.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written 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; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.
- 17.2 Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

18. CONFIDENTIALITY

- 18.1 Both Parties agree to protect proprietary information received from the other ("Proprietary Information") in accordance with the provisions of Section 222 of the Act.
- 18.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:

- 18.2.1 Was at the time of receipt, already known to the Party receiving the Proprietary Information (the "Receiving Party"), free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Party disclosing the Proprietary Information (the "Disclosing Party"); or
- 18.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
- 18.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information, provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 18.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 18.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 18.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 18.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

19. INTERVENING LAW

- 19.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement (~~e.g., In the Matter of Connect America Fund, a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011 and subsequent authority)~~) or which may be the subject of further review. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations ("Change of Law Event") that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, either Party may require modification to the Agreement consistent with the action of the Change of Law Event by providing a written request of either Party in accordance with Section 21.0 above ("Written Notice") to negotiate an amendment to the Agreement. With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. In the absence of a specifically required effective date in the Change of Law Event, such modification shall be effective on the effective date of the amendment incorporating the change

20. GOVERNING LAW

- 20.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Network Elements, functions, Facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. Further, the Parties submit, as applicable, to personal jurisdiction in the state where the products and services at issue were furnished or sought and limited to Dallas, Texas and waive any and all objection to such venue.

21. REGULATORY APPROVAL

- 21.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC.

22. COMPLIANCE AND CERTIFICATION

- 22.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 22.2 Each Party warrants that it has obtained all necessary certifications and licenses prior to ordering any Interconnection, functions, Facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification and licensure.
- 22.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other Telecommunications Carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 22.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.
- 22.5 ~~Carrier warrants that it is a telecommunications carrier within the meaning of 47 U.S.C. § 153(51) and acknowledges that only telecommunications carriers are entitled to enter into interconnection agreements under the Act. If, during the term of this Agreement, AT&T TEXAS has a good faith basis to question whether Carrier is acting as a telecommunications carrier, AT&T TEXAS may initiate a proceeding at the Commission to determine whether Carrier is acting as a telecommunications carrier, and may terminate this Agreement if the Commission determines Carrier is not doing so. In order to avoid the need for such a proceeding if possible, Carrier will cooperate with AT&T TEXAS's attempts to determine whether Carrier is acting as a telecommunications carrier by providing such information as AT&T TEXAS may reasonably request relating thereto.~~
- 22.6 ~~Carrier warrants that such interconnection as it may obtain from AT&T TEXAS pursuant to this Agreement is for the provision of telephone exchange service as defined in 47 U.S.C. § 153(54) and/or exchange access as defined in 47 U.S.C. § 153(20), and acknowledges that AT&T TEXAS has no duty to provide interconnection pursuant to 47 U.S.C. § 251(c)(2) to a company that does not provide telephone exchange service or exchange access. If, during the term of this Agreement, AT&T TEXAS has a good faith basis to question whether Carrier is providing telephone exchange service or exchange access, AT&T TEXAS may initiate a proceeding at the Commission to determine whether Carrier is doing so, and may discontinue its provision of interconnection to Carrier pursuant to the Agreement if the Commission determines Carrier is not doing so. In order to avoid the need for such a proceeding if possible, Carrier will cooperate with AT&T TEXAS's attempts to determine whether~~

~~Carrier is providing telephone exchange service or exchange access by providing such information as AT&T TEXAS may reasonably request relating thereto.~~

~~22.7 One year after the Effective Date of this Agreement, and again on the anniversary of the Effective Date in each succeeding year, Carrier will provide AT&T TEXAS a written document, signed under oath by a person with authority to bind Carrier certifying (i) that he or she has such authority; (ii) that Carrier is operating as a telecommunications carrier and is using interconnection provided by AT&T TEXAS to provide telephone exchange service as defined in 47 U.S.C. § 153(54) and/or exchange access as defined in 47 U.S.C. § 153(20), in accordance with subsections 22.5 and 22.6 above; (iii) that Carrier has not used the Facilities to deliver land-to-mobile traffic that it receives from AT&T TEXAS in a manner not permitted by this Agreement; and (iv) that Carrier has not used the Facilities to deliver traffic in a manner not permitted by this Agreement. If AT&T TEXAS does not timely receive such a certification from Carrier, AT&T TEXAS may send Carrier notice via certified mail or overnight delivery reminding Carrier that it may do so, and Carrier must then deliver the required certification to AT&T TEXAS within fifteen (15) days after such a notice is rendered. If the Carrier fails to provide the required certification required under this Agreement, AT&T may, in addition to exercising any other rights or remedies it may have under Applicable Law:~~

~~22.7.1 cancel any pending application, request or order for new or additional Interconnection products and/or services and network elements, under this Agreement;~~

~~22.7.2 disconnect any interconnection products and/or services furnished under this Agreement; and~~

~~22.7.3 discontinue providing any Interconnection products and/or services furnished under this Agreement.~~

23. LAW ENFORCEMENT AND CIVIL PROCESS

23.1 AT&T TEXAS and Carrier shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

23.1.1 Intercept Devices

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

23.2 Subpoenas

23.2.1 If a Party receives a subpoena for information concerning a End User the Party knows to be a End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, in which case that Party will respond to any valid request.

23.3 Emergencies

23.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any Claims or Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such Claims or Losses.

24. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

- 24.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control 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.
- 24.2 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. 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.

25. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

- 25.1 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. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

26. ASSIGNMENT

26.1 Assignment of Contract

- 26.1.1 ~~Carrier~~ Neither Party may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated Third Party without the prior written consent of ~~AT&T TEXAS~~ the other Party. Any attempted assignment or transfer that is not permitted is void *ab initio*.

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- 26.1.2 ~~Carrier~~ A Party may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to ~~AT&T TEXAS~~ the other Party; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, ~~Carrier~~ Party may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with ~~AT&T TEXAS~~ the other Party under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

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26.2 Corporate Name Change and/or change in "d/b/a" only

- 26.2.1 When ~~only Carrier~~ Party changes name and/or form of entity (e.g., a corporation to a limited liability corporation) ~~but there is changing, and which does not include any change to a Carrier~~ the Party's OCN/ACNA, constitutes a ~~Carrier~~ there is a "Name Change. For a Carrier

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~~Name Change, Carrier.~~ The Party will incur a record order charge for each Carrier CABS BAN.

26.3 Company Code Change

26.3.1 Any assignment or transfer of an agreement associated with the transfer or acquisition of "assets" provisioned under that agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes an Carrier Company Code Change. For the purposes of Section 26.3.1, "assets" means any Interconnection, ~~Unbundled Network Element~~, function, facility, product or service provided under that agreement. ~~Carrier~~Each Party shall provide ~~AT&T TEXAS~~the other Party with ninety (90) calendar days advance written notice of any assignment associated with a Carrier Company Code Change and obtain ~~AT&T TEXAS~~the other Party's consent. ~~AT&T TEXAS, which shall not be unreasonably withhold consent to an Carrier Company Code Change~~withheld; provided, however, ~~AT&T TEXAS~~ consent to any ALLTLE Company Code Change is contingent upon cure of any outstanding charges owed under that agreement and any outstanding charges associated with the "assets" subject to the Carrier Company Code Change. In addition, Carrier acknowledges that Carrier may be required to tender additional assurance of payment related to Facilities and Trunks if requested under the terms of this Agreement.

26.3.2 For any Carrier Company Code Change, ~~Carrier~~the changing Party must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. ~~Carrier~~The Party shall pay the appropriate charges for each service order submitted to accomplish a Carrier Company Code Change. In addition, ~~Carrier~~the Party shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.

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27. SUBCONTRACTING

- 27.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 27.2 Each Party will be solely responsible for payments due to that Party's subcontractors.
- 27.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 27.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 27.5 Any subcontractor that gains access to CPNI, Confidential Information or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

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28. ENVIRONMENTAL CONTAMINATION

- 28.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.

- 28.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, **AT&T TEXAS** shall, at Carrier's request, indemnify, defend, and hold harmless Carrier, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by **AT&T TEXAS** or any person acting on behalf of **AT&T TEXAS**, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by **AT&T TEXAS** or any person acting on behalf of **AT&T TEXAS**, or (iii) the presence at the work location of an Environmental Hazard for which **AT&T TEXAS** is responsible under Applicable Law or a Hazardous Substance introduced into the work location by **AT&T TEXAS** or any person acting on behalf of **AT&T TEXAS**.
- 28.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, Carrier shall, at **AT&T TEXAS'** request, indemnify, defend, and hold harmless **AT&T TEXAS**, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by Carrier or any person acting on behalf of Carrier, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by Carrier or any person acting on behalf of Carrier, or (iii) the presence at the work location of an Environmental Hazard for which Carrier is responsible under Applicable Law or a Hazardous Substance introduced into the work location by Carrier or any person acting on behalf of Carrier.
- 28.4 For the purposes of this agreement, "Hazardous Substances" means 1) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, 2) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or 3) asbestos and asbestos containing material in any form, and 4) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.
- 28.5 For the purposes of this agreement, "Environmental Hazard" means 1) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, 2) asbestos containing materials, or 3) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 28.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into 1) the work location, or 2) other environmental media, including but not limited to, the air, ground or surface water, or soil.

29. FORCE MAJEURE

- 29.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics of a severely debilitating disease (SARS), terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents,

hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance in a non-discriminatory fashion vis-à-vis other Telecommunications Carriers, including the affected Party's own Affiliates, and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease in a non-discriminatory fashion vis-à-vis other Telecommunications Carriers, including the affected Party's own Affiliates

30. TAXES

- 30.1 Each Party purchasing Interconnection, ~~network elements~~, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, ~~network elements~~, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either Party's corporate existence, status, or income or (b) any corporate franchise Taxes. Taxes shall be billed as a separate item on the invoice.
- 30.2 With respect to any purchase of Interconnection, ~~network elements~~, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 30.3 With respect to any purchase hereunder of Interconnection, ~~network elements~~, functions, facilities, products and services under this Agreement that are resold to a Third Party, if any Tax is imposed by Applicable Law on the ~~End User~~ Third Party purchaser in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the ~~End User~~ Third Party purchaser; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 30.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly

billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.

- 30.5 If the purchasing Party fails to impose any Tax on and/or collect any Tax from ~~End Users~~Third Party purchaser as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from ~~End Users~~Third Party purchasers, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 30.6 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 30.7 If Applicable Law excludes or exempts a purchase of Interconnection, ~~network elements~~, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, Loss, cost or expense with respect to forbearing to collect such Tax.
- 30.8 With respect to any Tax or Tax controversy covered by this Section 30, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 30.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 30 shall be sent in accordance with Section 16, "Notices" hereof.

31. NON-WAIVER

- 31.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. 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. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

32. NETWORK MAINTENANCE AND MANAGEMENT

- 32.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.

- 32.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for network traffic management issues to the other's surveillance management center and a trouble reporting number.
- 32.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 32.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 32.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.
- 32.6 Neither Party shall use any Interconnection, ~~Network Element~~, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of **AT&T TEXAS**, its affiliated companies or other connecting Telecommunications Carriers, prevents any Telecommunications Carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other Telecommunications Carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting Telecommunications Carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.
- 32.7 ~~The When the Parties shall employ direct interconnection they will~~ cooperate to establish separate, dedicated Trunks for the completion of calls to high volume End Users.
- 32.8 Carrier and **AT&T TEXAS** will work cooperatively to install and maintain a reliable network. Carrier and **AT&T TEXAS** will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.
- 32.9 Carrier shall acknowledge calls in accordance with the following protocols.
- 32.9.1 Carrier will provide a voice intercept announcement or distinctive tone signals to the calling party when a call is directed to a number that is not assigned by Carrier.
- 32.9.2 Carrier will provide a voice announcement or distinctive tone signals to the calling party when a call has been received and accepted by Carrier's MSC.
- 32.10 When Carrier's MSC is not able to complete calls because of a malfunction in the MSC or other equipment, Carrier will either divert the call to its operator, or provide a recorded announcement to the calling party advising that the call cannot be completed.
- 32.11 Carrier will provide supervisory tones or voice announcements to the calling party on all calls, consistent with standard telephone industry practices.

32.12 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

32.13 Carrier agrees to pay **AT&T TEXAS** for Time and Materials in all instances where Carrier submits a trouble report and **AT&T TEXAS**, through investigation and testing, determines that the trouble is outside of the **AT&T TEXAS** network. Carrier will be billed Time and Material Rate from the appropriate tariff

33. SIGNALING

33.1 Signaling Protocol. SS7 Signaling is **AT&T TEXAS**' preferred method for signaling. SIP is Carrier's preferred method for signaling. Where multi-frequency signaling is currently used, the Parties agree to use their best efforts to convert to SS7 or SIP. If SS7 services are provided by **AT&T TEXAS**, they will be provided in the applicable access tariffs. If SIP is used to provide service by Carrier and any SS7 charges or related charges are in fact billed by AT&T to Carrier, then Carrier may offset and eliminate any such charges where SIP was also used. Where multi-frequency signaling is currently used, the Parties agree, below, to interconnect their networks using multi-frequency ("MF") or ("DTMF") signaling, subject to availability at the End Office Switch or Tandem Switch at which Interconnection occurs. The Parties acknowledge that the use of MF and SS7 signaling may not be optimal. **AT&T TEXAS** and Carrier will not be responsible to each other for correcting any undesirable characteristics, service problems or performance problems that are associated with MF/SS7/SIP inter-working or the signaling protocol required for Interconnection with Carrier employing MF signaling.

33.2 Parties directly or, where applicable, through their Third Party provider, will cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its End Users. Where available, all CCS signaling parameters will be provided including, without limitation, Calling Party Number ("CPN"), originating line information ("OLI"), calling party category and charge number.

34. TRANSMISSION OF TRAFFIC TO THIRD PARTIES

34.1 ~~Carrier will not send to **AT&T TEXAS** local traffic that is destined for the network of a Third Party unless Carrier has entered into an agreement with that Third Party to exchange traffic and such agreement is active.~~

35. END USER INQUIRIES

35.1 Each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

35.2 Each Party will ensure that representatives who receive inquiries regarding the other Party's services:

35.2.1 Provide the specified telephone number to callers who inquire about the other Party's services or products; and

35.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

35.3 Except as otherwise provided in this Agreement, Carrier shall be the primary point of contact for Carrier's End Users with respect to the services Carrier provides such End Users.

36. EXPENSES

- 36.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.
- 36.2 AT&T TEXAS and Carrier shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees and any costs of notice or publication, but not including attorney's fees) associated with the filing of this Agreement.

37. CONFLICT OF INTEREST

- 37.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, or paid a fee, or has otherwise received or will receive any personal compensation or consideration from the other Party, or from any of the other Party's employees or agents, in connection with the negotiation of this Agreement or any associated documents.

38. SURVIVAL OF OBLIGATIONS

- 38.1 The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of these General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 4.5; 4.6, 6, 9, 10, 12 14, 15, 17, 18, 20, 22.4, 23.3, 27, 31, and 40.

39. SCOPE OF AGREEMENT

- 39.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.
- 39.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

40. AMENDMENTS AND MODIFICATIONS

- 40.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such amendment or modification is in writing, dated, and signed by authorized representatives of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commission(s). AT&T TEXAS and Carrier shall each be responsible for its share of the publication expense (i.e., filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.
- 40.2 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.
- 40.3 If either Party proposes to make any permanent changes in the arrangements provided for in this Agreement, or any Attachments, or any permanent change in its operations that would affect the other Party's operations or services once the Trunks, apparatus, equipment, or any other item furnished by the Parties under this Agreement are installed, the changing Party shall give reasonable advance written notice to the other Party of such changes, advising when such changes will be made. All such changes shall be coordinated with the non-changing Party. Nothing in this Section shall affect the Parties' rights and obligations under this Agreement.

- 40.4 Subject to specific provisions herein to the contrary, each Party shall be solely responsible, at its expense, for the overall design of its services and for any redesigning or rearrangement of its services that may be required because of changes in Facilities, Trunks, operations or procedures of the other Party, minimum network protection criteria, or operating or maintenance characteristics of the Trunks.

41. AUTHORIZATION

- 41.1 **AT&T TEXAS** represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, that AT&T Services, Inc. has full power and authority to execute and deliver this Agreement as agent for **AT&T TEXAS**, and that **AT&T TEXAS** has full power and authority to perform its obligations hereunder.
- 41.2 Carrier represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 41.3 Each Party warrants that it has obtained or will obtain prior to operating under this Agreement, all-necessary jurisdictional licenses, authorizations and/or certifications required in those jurisdictions in which it will order services or Facilities or will operate under this Agreement. Upon request, each Party shall provide proof of such licenses, authorizations and/or certification.

42. ENTIRE AGREEMENT

42.1 AT&T TEXAS

- 42.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

43. MULTIPLE COUNTERPARTS

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

44. DIALING PARITY

- 44.1 **AT&T TEXAS** agrees that local dialing parity will be available to Carrier in accordance with the Act.

45. REMEDIES

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

**AT&T TEXAS Cellular/PCSCMRS Interconnection
Agreement Signatures**

Formatted Table

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title:

Date: _____

Date: _____

OCN # 139F _____

ACNA _____

DOCKET 44538

WCX THRESHOLD ISSUES BRIEF

EXHIBIT 3

W. Scott McCollough

From: Lowell Feldman <lowell.feldman@gmail.com>
Sent: Wednesday, January 14, 2015 11:24 AM
To: 'W. Scott McCollough'
Subject: FW: GT&C
Attachments: Indirect Interconnection Attachment 1-14-2014.docx

From: Lowell Feldman [mailto:lowell.feldman@gmail.com]
Sent: Wednesday, January 14, 2015 11:24 AM
To: 'JOHNSON, SONIA G'
Cc: lowell.feldman@gmail.com
Subject: RE: GT&C

Sonia,

You are correct that the GT&C's have only the AT&T Proposed Language and then the WCX redlines. Often, the WCX redlines did simply revert back to the original Cricket language.

Since the AT&T document you sent us was locked and password protected to collect metadata – we created a new document which was your proposed language and marked it to show our changes, even if those changes were to use the original Cricket language.

Also attached is a new proposed attachment that details out SIP Interconnection and Indirect interconnection. These terms are not in the Cricket Agreement – and we affirmatively propose them to implement current law with respect to these issues. It does not have a lock or password protect.

I request that future documents we trade do not password protect or lock as well. Will you agree?

Thank you,

Lowell Feldman

From: JOHNSON, SONIA G [mailto:sj6424@att.com]
Sent: Wednesday, January 14, 2015 11:00 AM
To: Lowell Feldman
Subject: RE: GT&C

Mr. Feldman,

This is to acknowledge receipt of your emails. I am currently reviewing your request concerning the pricing. As soon as I have an answer to your questions, I will get back with you. The redlined GT&Cs I received do not appear to have the AT&T redlines to the Cricket GT&Cs that were sent to you. Please let me know what document version you have redlined.

Sincerely,

Sonia Johnson

Lead Interconnection Agreements Manager
AT&T Wholesale

205-321-4936
600 N. 19th Street
10th Floor
Birmingham, AL 35203

This email and any files transmitted with it are the property of AT&T, are confidential, and are intended solely for the use of the individual or entity to whom this email is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please notify the sender at (205) 321-4936 and delete this message from your computer immediately. Any other use, dissemination, forwarding, printing or copying of this email is strictly prohibited.

From: Lowell Feldman [<mailto:lowell.feldman@gmail.com>]
Sent: Monday, January 12, 2015 6:53 PM
To: JOHNSON, SONIA G
Cc: lowell.feldman@gmail.com
Subject: GT&C

Sonia,

I still await your answer as to how the proposed pricing of AT&T implements the Connect America Order and how the Connect America Order is applied in the Attachments.

In the meantime, here is WCX's counter to AT&T's mark-up of the Cricket ICA.

When you get us the explanation on your pricing, we will finish our edits on the Attachments and should soon after schedule a call. I am hopeful that we can reach an agreement. Our intent in our edits is simply to implement the current law with respect to CMRS interconnection with AT&T-ILEC. We will not voluntarily limit or waive any rights we have.

Thanks, and I look forward to your response.

Lowell Feldman

SIP and Indirect Interconnection Attachment

Until AT&T Texas has the technical ability to connect to Carrier using SIP, Carrier may, at its election, enter into an agreement with one Interconnected CLEC per LATA who then shall order new trunks with AT&T Texas that will be exclusively dedicated to traffic flowing to or from Carrier. Carrier makes this election the following terms apply:

- 1.0 Trunking and Compensation for indirect routing to Carrier through Third Party CLEC
 - 1.1 AT&T Texas and the Third Party CLEC shall establish one or more separate trunk groups over existing facilities for the transmission and routing of traffic between AT&T Texas and the Third Party CLEC that is then transited to Carrier.
 - 1.1.1 The trunk groups shall initially be established at one or more AT&T IAL tandem for Non-Access Traffic and one IEL tandem for Access Traffic. All arrangements will be on a per LATA basis.
 - 1.2 In order to effectuate the creation of the foregoing Trunks, AT&T Texas and the Third Party CLEC will follow the guidelines as established in the effective ICA between AT&T and CLEC; provided that if and to the extent the ICA speaks to "251(b)(5) Traffic" and/or "Local Traffic" any calling scope restrictions shall be extended to the MTA. Further, any and all terms, conditions and restrictions limiting the CLEC's ability to serve only CLEC "End Users" shall not apply.
 - 1.3 AT&T Texas will perform all required translations necessary to route all identified NPA-NXX-X to the Third Party CLEC's network so they can then be routed to Carrier. These codes include and are not limited to non-geographic 5YY codes. AT&T Texas will accept communications identifying codes for to be translated from both Carrier and the Third Party CLEC. No charges will apply for receiving or performing translations.
- 2.0 All Non-Access traffic will be bill and keep as between AT&T Texas and the Third Party CLEC and AT&T Texas and Carrier. Access traffic will be subject to access rates.
- 3.0 AT&T Texas or Carrier may request that the traffic involved be migrated to a direct interconnection arrangement. If AT&T Texas is the requesting party, it must agree to use SIP as the interconnection method. If Carrier is the requesting party, it must agree to use SS7 as the interconnection method absent express agreement by AT&T Texas.

