

Diamond Williams

110065-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Tuesday, March 29, 2011 3:48 PM
To: Filings@psc.state.fl.us
Subject: 110065-TP AT&T Florida's Motion to Dismiss and Response to Easy Telephone's Complaint
Importance: High
Attachments: Untitled.pdf

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BellSouth Telecommunications, Inc. d/b/a AT&T Florida

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B. Re: Docket No. 110065-TP: Complaint for relief by Easy Telephone Services Company against

BellSouth Telecommunications, Inc. d/b/a AT&T Florida for dispute over interpretation of

interconnection agreement regarding cash back promotions

C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian

D. 65 pages total (includes letter, certificate of service, pleading and Exhibits A and B and cover sheets for Exhibits C and D)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss and Response to Easy Telephone's Complaint

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March 29, 2011

Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 110065-TP: Complaint for relief by Easy Telephone Services Company against BellSouth Telecommunications, Inc. d/b/a AT&T Florida for dispute over interpretation of interconnection agreement regarding cash back promotions

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss and Response to Easy Telephone's Complaint, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Manuel A. Gurdian

cc: All Parties of Record
Jerry D. Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

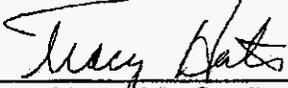
CERTIFICATE OF SERVICE
Docket No. 110065-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

First Class U.S. Mail this 29th day of March, 2011 to the following:

Theresa Tan
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

Easy Telephone Services Company
Joseph S. Fernandez
8280 SE 15th Court
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Tel. No.: (352) 598-7197
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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint for Relief by Easy)
Telephone Services Company)
Against BellSouth Telecommunications,)
Inc. d/b/a AT&T Florida for dispute over)
Interpretation of Interconnection Agreement)
Regarding Cash Back Promotions)

Docket No. 110065-TP

Filed: March 29, 2011

**AT&T FLORIDA'S MOTION TO DISMISS AND RESPONSE TO
EASY TELEPHONE'S COMPLAINT**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") respectfully submits its Motion to Dismiss and Response to the Complaint filed by Easy Telephone Services Company¹ ("Easy Telephone"). As will be explained herein, Easy Telephone is not entitled to any relief whatsoever and its Complaint should be dismissed. Accordingly, the Florida Public Service Commission ("Commission") should issue an Order that: (i) dismisses Easy Telephone's Complaint and (ii) requires Easy Telephone to make immediate payment of all past due amounts on its Florida accounts.

I. INTRODUCTION

On March 9, 2011, Easy Telephone filed with the Florida Commission a one-page correspondence stating that it would like "to file a formal complaint" against AT&T Florida, along with a simultaneous request that the Commission "help to mediate between Easy and AT&T." Easy Telephone's correspondence not only fails to meet the most basic requirements of a pleading under the Florida Commission's pleading requirements, but it also fails to shed any light on the specific issues it disputes with AT&T Florida. Rather, the only salient point Easy

¹ Upon information and belief, AT&T Florida does not believe that the Complaint was properly filed by Joseph S. Fernandez, Easy Telephone's President, as Mr. Fernandez is not a Florida Bar licensed attorney nor has he been designated a qualified representative by this Commission. See *In re: Applications for Qualified Representative Status*, Docket No. 110008-TP and www.flabar.org.

Telephone seems to make in its one-pager is that it should somehow be permitted to opt into the AT&T Florida/Image Access interconnection agreement for the sole purpose, as Easy Telephone openly concedes, to “allow Easy to withhold on disputed amounts...”

Easy Telephone admits, as it has to, that the Parties’ Agreement does not allow Easy Telephone to withhold disputed amounts. Easy Telephone’s only argument, then, appears to be that it should somehow be allowed to escape payment of the significant past due amounts owed AT&T Florida (as is required by the Parties’ Agreement) by being permitted to opt into another interconnection agreement that doesn’t have the same payment and dispute provisions. To permit this, however, would make a farce of the federal Act’s opt-in requirements, and should therefore be summarily dismissed by this Commission. Additionally, Easy Telephone is not without recourse related to its disputes with AT&T Florida. On this front, Easy Telephone is free to follow the dispute resolution provisions specifically outlined in the Parties’ Agreement to address any and all disputes it may have with AT&T Florida.²

II. BACKGROUND

On March 9, 2006, AT&T Florida filed a request for approval of the Interconnection Agreement (“Agreement”) with Easy Telephone.³ By operation of law, on June 7, 2006, the Commission approved the Agreement between Easy Telephone and AT&T Florida.⁴ In that Commission-approved and binding Agreement, Easy Telephone expressly agreed to “make payment to [AT&T Florida] for all services billed *including disputed amounts*,” and it agreed to make those payments “on or before the next bill date.”⁵ Easy Telephone has not honored its

² See Agreement, General Terms and Conditions (“GTC”), § 8, and Attachment 7, Billing § 2. Exhibits “A” and “B” to this Response are copies of the GTC and Attachment 7, respectively, to the Parties’ Agreement.

³ See Docket No. 060203, *In re: Request for approval of interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Easy Telephone Services Company*.

⁴ See Commission Staff Memorandum dated June 9, 2006 filed in Docket No. 060203-TP.

⁵ See Agreement, Attachment 7, Billing, at §§1.4 and 1.4.1 (emphasis added).

commitments under the Agreement. Instead, under the guise of various credit requests and billing “disputes,” Easy Telephone has substantially stopped paying its bills. On February 7, 2011, AT&T Florida sent Easy Telephone a letter⁶ and attachments that, among other things: sets forth Easy Telephone’s substantial past due balance; quotes the operative language of the parties’ Agreement; notes that from May 2008 to November 2010, Easy Telephone paid AT&T Florida less than ten percent of the net amount owed (the billed amounts less credits AT&T Florida applied for promotions and other adjustments) for that same time period; and demands payment of all past due charges on or before February 23, 2011, or suffer suspension of order processing,⁷ and payment on or before March 15, 2011 or Easy Telephone’s service will be disconnected. In its Complaint, Easy Telephone acknowledges that the parties’ Agreement does “not allow Easy to withhold on disputed amounts.”

Easy Telephone alleges that it “has submitted a total of \$1,632,000 in promotions-related disputes to AT&T, which remain open and unresolved.” AT&T Florida denies this allegation, which is, in effect, an argument that AT&T Florida must pay Easy Telephone for having ordered services from AT&T Florida and resold those services to its end users. More importantly, Easy Telephone’s allegations do nothing to alter the fact that the plain language of the Agreement requires it to pay all amounts it is billed, even if it disputes those amounts.⁸ Moreover, AT&T Florida questions whether Easy Telephone can pay its bills on a going-forward basis, much less its substantial past-due balance, and AT&T Florida is increasingly concerned that its

⁶ Confidential and Proprietary Exhibit “C” to this Response is a copy of that letter and its attachments.

⁷ On February 23, 2011, AT&T Florida extended the suspension of order processing deadline to February 25, 2011. On March 15, 2011, Easy Telephone was disconnected for its failure to comply with the clear and unambiguous terms of the Agreement.

⁸ In its Complaint, Easy Telephone makes no offer to pay any portion of the balance. Instead, it essentially asks the Commission to allow it to continue ordering services from AT&T Florida and continue violating its Agreement by paying AT&T Florida nothing for those services indefinitely. To require AT&T Florida to wait indefinitely for Easy Telephone to pay its bills would require AT&T Florida’s stockholders, in essence, to continue subsidizing non-paying wholesale customers like Easy Telephone.

stockholders will have to bear the burden of the substantial Easy Telephone uncollectibles. AT&T Florida, therefore, respectfully asks that the Commission deny the relief requested in Easy Telephone's Complaint.

III. MOTION TO DISMISS

Easy Telephone's one-page Complaint should be summarily dismissed because it falls far short of the well-established pleading requirements that a Complaint must meet to be deemed sufficient. The various deficiencies in the Complaint do not just render it inadequate to meet the requirements of Florida law. The Complaint is so vague as to both the operative facts and the law for which Easy Telephone seeks relief that it would be impossible for the Commission to properly issue a decision in Easy Telephone's favor on the Complaint. For these reasons, the Complaint should be dismissed as a matter of law.

A. Standard for Motion to Dismiss

A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. *See Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993). To sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. *In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) citing *In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc.* 95 FPSC 5:339 (1995); *Varnes*, 624 So.2d at 350. "In order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed

to be alleged under the substantive law on the matter. All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not the pleading should be dismissed.” *See In re: Complaint and petition of John Charles Heekin against Florida Power & Light Co.*, Order No. PSC-99-10544-FOF-EI at 3, Docket No. 981923-EI, (Issued May 24, 1999).

B. Easy Telephone’s one-page Complaint fails to state a cause of action.

1. Easy Telephone fails to allege a specific violation of the parties’ Agreement

In its Complaint, Easy Telephone alleges that it requested that AT&T Florida allow it “to opt into a different ICA (the Image Access ICA), which would allow Easy to withhold on disputed amounts until these amounts were resolved. AT&T stated that it would not allow Easy to opt into a new ICA unless Easy paid all open, disputed charges.” Easy Telephone further alleges that it has “submitted a total of \$1,632,000 in promotions-related disputes to AT&T, which remain open and unresolved” and that AT&T Florida “continues to refuse to address these amounts through their dispute process.” To the extent Easy Telephone is attempting to claim that AT&T Florida violated the parties’ Agreement, its claim fails to state a cause of action in that Easy Telephone fails to allege which portions of the Agreement were allegedly violated and how, with specificity, the provisions of the Agreement were violated. Accordingly, this claim should be dismissed.

2. Easy Telephone fails to allege a specific violation of “federal law”

Easy Telephone makes a vague reference to “federal law” and that it may apply to the situation at hand in its Complaint stating “we believe Federal law prohibits AT&T from applying these restrictions and preventing us the opportunity to opt into a more even-handed, existing ICA with AT&T.” To the extent Easy Telephone is attempting to claim that AT&T Florida violated

“federal law”, its claim fails to state a cause of action in that Easy Telephone fails to allege which federal statutory provision(s) AT&T Florida allegedly violated and how AT&T Florida violated same. Accordingly, this claim should be dismissed.

Moreover, the Commission must determine whether the Legislature has granted it any authority⁹ to find that AT&T Florida is in violation of “federal law”. In making these determinations, the Commission must keep in mind that the Legislature has never conferred upon the Commission any general authority to regulate public utilities, including telephone companies. *See City of Cape Coral v. GAC Util., Inc.*, 281 So. 2d 493, 496 (Fla. 1973). Instead, “[t]he Commission has only those powers granted by statute expressly or by necessary implication.” *See Deltona Corp. v. Mayo*, 342 So. 2d 510, 512 n.4 (Fla. 1977); *accord East Central Regional Wastewater Facilities Oper. Bd. v. City of West Palm Beach*, 659 So.2d 402, 404 (Fla. 4th DCA 1995) (noting that an agency has “only such power as expressly or by necessary implication is granted by legislative enactment” and that “as a creature of statute,” an agency “has no common law jurisdiction or inherent power . . .”). Any authority granted by necessary implication must be derived from fair implication and intendment incident to any express authority. *See Atlantic*

⁹ In order to hear and determine a complaint or petition, a court or agency must be vested not only with jurisdiction over the parties, but also with subject matter jurisdiction to grant the relief requested by the parties. *See Keena v. Keena*, 245 So. 2d 665, 666 (Fla. 1st DCA 1971). Subject matter jurisdiction arises only by virtue of law – it must be conferred by constitution or statute and cannot be created by waiver or acquiescence. *Jesse v. State*, 711 So. 2d 1179, 1180 (Fla. 2d DCA 1998). This Commission, therefore, must dismiss a complaint or a petition to the extent that it asks the Commission to address matters over which it has no jurisdiction or to the extent that it seeks relief that the Commission is not authorized to grant. *See, e.g., In re: Petition by AT&T Communications of the Southern States, Inc. TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries.* Docket No. 010345-TP, PSC-01-2178-FOF-TP (Nov. 6, 2001) (granting BellSouth’s Motion to Dismiss AT&T’s and FCCA’s Petition for Structural Separation because “the Petitions fail to state a cause of action upon which relief can be granted. Namely, we have neither Federal nor State authority to grant the relief requested, full structural separation.”); *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (Commission dismissed a complaint seeking monetary damages against a public utility for alleged eavesdropping, voyeurism, and damage to property because the complaint involved “a claim for monetary damages, an assertion of tortious liability or of criminal activity, any and all of which are outside this Commission’s jurisdiction.”).

Coast Line R.R. Co. v. State, 74 So. 595, 601 (Fla. 1917); *State v. Louisville & N. R. Co.*, 49 So. 39 (Fla. 1909). Finally, “any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it.” *State v. Mayo*, 354 So. 2d 359, 361 (Fla. 1977).

Easy Telephone has failed to demonstrate that the Commission has the authority to find that AT&T Florida violated “federal law”. Specifically, as can be seen by a cursory review of Chapter 364, Florida Statutes, the Legislature has not granted the Commission any general authority to determine whether a carrier has violated “federal law”.¹⁰ Here, to the extent that Easy Telephone is requesting that the Commission find that AT&T Florida violated “federal law”, without more specificity, pursuant to Commission precedent and Florida law, the Commission lacks jurisdiction to make such a finding. Accordingly, AT&T Florida requests that the Commission dismiss Easy Telephone’s Complaint to the extent it seeks a finding that AT&T Florida has violated “federal law”.

IV. RESPONSE

A. **The unambiguous language of the Agreement requires Easy Telephone to pay all amounts billed, including disputed charges.**

¹⁰ The Commission addressed a similar situation in *In re: Complaint by Supra Telecommunications and Information Systems, Inc. Against BellSouth Telecommunications, Inc. Regarding BellSouth’s Alleged Use of Carrier-to-Carrier Information*. Docket No. 030349-TP, Order No. PSC-03-1892-FOF-TP, (Issued December 11, 2003), (“*Sunrise Order*”). In the *Sunrise Order*, the Commission held that “[f]ederal courts have ruled that a state agency is not authorized to take administrative action based solely on federal statutes” and that “[s]tate agencies, as well as federal agencies, are only empowered by the statutes pursuant to which they are created.” See *Sunrise Order* at 3 (citations omitted). The Commission further noted, however, it can construe and apply federal law “in order to make sure [its] decision under state law does not conflict” with federal law. *Id.* at 3-4. Accordingly, in the *Sunrise Order*, the Commission determined that it “cannot provide a remedy (federal or state) for a violation of” federal law but that the Commission can interpret and apply federal law to ensure that its decision under state law does not conflict with federal law. *Id.* at 5. See also, *In re: Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC*. Docket No. 031125, Order No. PSC-04-0423-FOF-TP (Issued April 26, 2004) (The Commission “acknowledged that federal courts have found that a state agency is not authorized to take administrative action based solely on federal statutes. *Id.* at 3 (citing *Curtis v. Taylor*, 648 F.2d 946 (5th Cir. 1980)). Since Count Five relies solely on a federal statute as the basis for relief, we find it appropriate to dismiss Count Five.”).

The parties' Commission-approved Agreement¹¹ requires Easy Telephone to pay all amounts it is billed, even if it disputes those amounts:

Payment of *all* charges will be the responsibility of Easy Telephone.¹²

Easy Telephone shall make payment to [AT&T Florida] for all services billed *including disputed amounts*.¹³

Payment for services provided by [AT&T Florida], *including disputed charges*, is due on or before the next bill date.¹⁴

The language quoted above is unambiguous, and the Commission-approved Agreement is a valid contract. The Commission, therefore, is required by law to enforce the Agreement as written because Florida law is clear that "an **unambiguous** agreement must be enforced in accordance with its terms." *Paddock v. Bay Concrete Indus., Inc.*, 154 So.2d 313 (Fla. 2d DCA 1963). *See also, Brooks v. Green*, 993 So. 2d 58 (Fla. 1st DCA 2008)("It is established law in this state that a contract must be applied as written, absent an ambiguity or some illegality."); *Medical Center Health Plan v. Brick*, 572 So. 2d 548, 551 (Fla. 1st DCA 1990)("A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract. *Nat'l Health Laboratories, Inc. v. Bailmar, Inc.*, 444 So.2d 1078, 1080 (Fla. 3d DCA 1984)."). Moreover, "[i]t is a fundamental rule of contract interpretation that a contract which is clear, complete, and unambiguous does not require judicial construction," *Jenkins v. Eckerd Corp.*, 913 So.2d 43 (Fla. 1st DCA 2005), and "[i]t is not the role of the courts to make an otherwise valid

¹¹ The parties' Agreement is currently month-to-month. *See* GTC, Section 2.2 ("If as of the expiration of the initial term of this Agreement, a subsequent Agreement has not been executed by the Parties...this Agreement shall continue on a month-to-month basis...").

¹² Agreement, Attachment 7, p. 6, § 1.4.

¹³ *Id.*

¹⁴ *Id.* at § 1.4.1.

contract more reasonable from the standpoint of one contracting party.” *Stack v. State Farm Mut. Auto Ins. Co.*, 507 So.2d 617, 619 (Fla. 3d DCA 1987).¹⁵

The parties’ Agreement is not only a binding contract but also “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,” *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003), and once a carrier enters “into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement.” *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev’d in part on other grounds sub nom; Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). *See also, Mich. Bell Tel. Co. v. MCI metro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”). Moreover, “[t]he Act does not authorize a state commission to alter terms within an approved negotiated agreement or to nullify an approved negotiated agreement.” *In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or, in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (March 31, 1998).

¹⁵ These principles apply even when contractual terms bind a party to a seemingly harsh or out of the ordinary bargain. *See Barakat v. Broward County Hous. Auth.*, 771 So.2d 1193, 1195 (Fla. 4th DCA 2000) (“Contracts are to be construed in accordance with the plain meaning of the words contained therein...It is never the role of the trial court to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be bad bargain....A fundamental tenet of contract law is that parties are free to contract, even when one side negotiates a harsh bargain.”). *See also, Applica Inc. v. Newtech Electronics Indus., Inc.*, 980 So.2d 1194 (Fla. 3d DCA 2008) (“where an agreement is unambiguous...we enforce the contract as written, no matter how disadvantageous the language might later prove to be.”).

Additionally, in a docket involving agreement language that is identical to what is quoted above, the Commission found “that AT&T is entitled under the plain terms of the ICA to prompt payment of all sums billed; and in the absence of such payment, is entitled to proceed with the actions outlined in the Notice of Commencement of Treatment” and “the plain language of these provisions is clear that while [the CLEC] can dispute amounts billed by AT&T, it must pay those amounts as billed within the time specified by the ICA”. *In re: Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Docket No. 100021-TP, Order No. PSC-10-0457-PCO-TP, p.6 (Issued July 16, 2010).¹⁶

The language quoted above from Sections 1.4 and 1.4.1 of the parties’ Agreement is unambiguous, and the Commission-approved Agreement is a “valid contract.” The Commission, therefore, is required to enforce the Agreement as written, as it enforced an Agreement with identical language in Docket No. 100021-TP. Easy Telephone has, in essence, admitted that it breached the Agreement by its failure to pay all amounts due, including disputed amounts; thus, the Commission should deny Easy Telephone’s Complaint in which Easy Telephone does nothing more than ask to be relieved of its contractual obligations.

B. Easy Telephone cannot use an adoption request to avoid its debt to AT&T Florida under the parties’ Agreement

¹⁶ Commissions in Kentucky, North Carolina and Alabama have all reached similar conclusions regarding ICA with language that is identical to the above quoted Agreement provisions. *See, In the Matter of BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. LifeConnex Telecom, LLC f/k/a Swiftel, LLC*, Case No. 2010-00026; *In the Matter of Disconnection of LifeConnex Telecom, Inc. f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina*, Docket No. P-55, Sub 1817; and *Petition of LifeConnex Telecom, LLC, f/k/a Swiftel, LLC Concerning Implementation of its Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Alabama or AT&T Southeast and Motion for Temporary Emergency Relief to Prevent Suspension of Service*, Docket No. 31450.

Easy Telephone alleges that in November 2010, it “requested that AT&T allow it to opt into a different ICA...” but that “AT&T stated that it would not allow Easy to opt into a new ICA unless Easy paid all open, disputed charges.”¹⁷ Easy Telephone further alleges that “[f]ederal law prohibits AT&T from applying these restrictions and preventing us the opportunity to opt into a more even-handed, existing ICA with AT&T.” Stated more directly, Easy Telephone’s position is that it should be permitted to obtain a new contract at its unilateral request, despite being in breach of its obligations in its current Agreement.

The Commission should reject Easy Telephone’s improper attempt to opt into a new agreement, without first curing its breach by paying all past due amounts, including disputed amounts as required by the clear and unambiguous provisions of the parties’ Agreement. Allowing Easy Telephone to opt into a new agreement without first requiring that it cure its existing breach would not be consistent with the “public interest”.

The 1996 Act and the FCC’s implementing regulations do not permit telecommunications carriers to adopt interconnection agreements to avoid substantive federal legal and policy determinations, nor do they permit telecommunications carriers to adopt interconnection agreements solely to avoid their contractual obligations, as Easy Telephone is trying to do here. On the contrary, interconnection agreement adoptions are subject to public interest scrutiny. The Commission has previously held that it has “authority to reject [a requesting company]’s adoption of the [ILEC/CLEC] Agreement as not being consistent with the public interest,” when there has been “prior inappropriate conduct and actions of one of the parties.” *See In re: Notice by BellSouth Telecommunications, Inc. of adoption of an approved interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and AT&T Communications*

¹⁷ See December 21, 2010 correspondence to Easy Telephone attached hereto as Confidential and Proprietary Exhibit “D”.

of the Southern States, Inc. by Healthcare Liability Management Corporations d/b/a Fibre Channel Networks, Inc. and Health Management Systems, Inc., Docket No. 990959-TP, Order No. PSC-99-1930-PAA-TP (Issued September 29, 1999).¹⁸

Similarly, although section 252(i) is not cited by Easy Telephone in its Complaint, at least one federal court has held, when a carrier tries to use section 252(i) to avoid its existing obligations, the adoption can be rejected. See *Global NAPS, Inc. v. Verizon New England, Inc.*, 396 F.3d 16 (1st Cir. 2005). In *Global Naps, Inc.*, a CLEC filed a petition for arbitration pursuant to §252 and the state commission entered its order in that arbitration proceeding. Displeased with that order, the CLEC purported to opt into a preexisting interconnection agreement (with terms more to its liking) pursuant to §252(i). The state commission, however, ruled that once it

¹⁸ The Commission is not alone in applying a "public interest" standard in reviewing adoption requests for interconnection agreements. See, e.g., Order Approving Negotiated Interconnection Agreement, *In the Matter of the Joint Application of Verizon Washington, DC, Inc. and Networks Plus, Inc. for approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, Order No. 12296, FC No. TIA 01-13, available at 2002 WL 1009261 (D.C. P.S.C. January 11, 2002) (recognizing parties' acknowledgement that interconnection agreement adopted under section 252(i) "must be consistent with the public interest, convenience, and necessity"); *Re MCI Telecommunications Corporation*, Cause No. 41268-INT-03, available at 1998 WL 971880, at *2 (Ind. U.R.C. November 25, 1998) (reviewing an interconnection agreement submitted for adoption pursuant to section 252(i) and "find[ing] that the adoption is consistent with the public interest, convenience and necessity"); *Joint Petition of CTSI, LLC and Sprint Spectrum, L.P. et al. for Approval of a Negotiated Interconnection Agreement under Section 252(i) of the Telecommunications Act of 1996, by Means of Adoption of an Interconnection Agreement between CTSI, LLC and Cellco Partnership and Allentown SMSA Limited Partnership d/b/a Verizon Wireless*, Docket No. A-310513F7008, available at 2003 WL 22908789, at *2-*3 (Pa. P.U.C. October 2, 2003) (recognizing application of section 252(e)'s public interest test in considering requests for adoption under section 252(i)); *Joint Petition of Verizon Pennsylvania, Inc. and Broadview NP Acquisition Corp d/b/a Broadview Net Plus for Approval of an Interconnection Agreement Under Sections 252 (i) of the Telecommunications Act of 1996, by Means of Adoption of an Interconnection Agreement Between Verizon Pennsylvania, Inc. and Level 3 Communications, LLC*, Docket No. A-311188F7000, available at 2003 WL 21916399, at *3 (Pa. P.U.C. July 10, 2003) (same); Order Rejecting Interconnection Agreement, Requiring Further Filing, *In the Matter of an Application for Approval of an Interconnection Agreement Adopted Under the Federal Telecommunications Act of 1996, Section 252(i)*, Docket No. P-407, 5654/M-98-1920, available at 1999 WL 33595189 (Minn. P.U.C. February 19, 1999) ("the Commission has consistently held that it may reject the adoption of previously-approved agreements and require modifications in the public interest"); Order Rejecting Interconnection Agreement, Requiring Further Filing, *In the Matter of the Request to Approve the Adoption Agreement of GTE Midwest and AT&T Communications Interconnection Agreement for Use Between GTE Midwest and OCI Communications*, Docket No. p-407, 5478/M-98-511, available at 1998 WL 1305525 (Minn. P.U.C. June 9, 1998) ("The Commission does not read 47 U.S.C. § 252(i) to preclude the Commission from modifying the terms of previously-approved contracts in order to apply the insight and experience it has gained through the numerous interconnection proceedings. To hold otherwise would be poor public policy and would also render meaningless the Act's requirement that negotiated agreements, including §252(i) agreements, be submitted for state commission approval").

had concluded the arbitration and issued its order, the CLEC was not free to “opt into” another agreement pursuant to §252(i) in lieu of accepting the arbitrated terms and incorporating them into its agreement. The First Circuit Court of Appeals affirmed that ruling, concluding that section 252(i) does not grant a CLEC like Easy Telephone an unconditional right to opt out of one agreement and into another.¹⁹

The purpose of section 252(i) of the Act is to prevent an ILEC from discriminating among competing carriers by requiring the incumbent to make its agreement with one carrier available to another. The purpose of the statute is not to allow a carrier to escape its payment obligations under an existing agreement. If Easy Telephone were permitted to opt into another agreement without first curing its contractual breach, it would allow Easy Telephone to engage in “inappropriate conduct and actions” with no consequences whatsoever thus negating the express and unambiguous terms of the parties’ Agreement. Here, where Easy Telephone seeks a new agreement in order to avoid its obligation to pay its significant past due balance that it owes AT&T Florida under the parties’ existing Agreement, sound public policy precludes the adoption. Any notion that adoption requests are to be granted automatically as a matter of course is squarely at odds with the precedent cited above. Accordingly, the Commission should, in the public interest, reject any adoption request until Easy Telephone complies with its obligation under the Agreement to pay for all services billed, including disputed amounts.

C. The Commission cannot require mediation between the parties in these circumstances

¹⁹ More recently, the New York Commission logically extended the First Circuit’s ruling explained above to interconnection agreements that are negotiated instead of arbitrated. *See Declaratory Ruling, Petition of Pac-West Telecomm, Inc. for a Declaratory Ruling Respecting Its Rights to Interconnection with Verizon New York, Inc.*, Case No. 06-C-1042 (February 27, 2007). The New York Commission held that “§251(i) does not confer an unconditional right to opt-in to an existing agreement or authorize unilateral termination of an existing interconnection agreement,” and it ruled that the CLEC “is not authorized to terminate its current . . . interconnection agreement with Verizon.”

Easy Telephone's Complaint includes a request that "Commission help to mediate between Easy and AT&T." However, the Commission has explicitly recognized that "mediation . . . is available on a strictly voluntary basis." Order No. PSC-03-0773-PCO-EQ, p. 5; *see also* Section 120.573, Florida Statutes and Rule 28-106.111. Because mediation can occur only when both parties consent, this Commission cannot enter an order at Easy Telephone's sole request that requires AT&T Florida to submit to such a process.

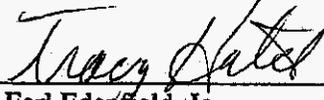
V. CONCLUSION

In conclusion, Easy Telephone has an existing Agreement with AT&T Florida which unambiguously requires Easy Telephone to pay all amounts in full, including disputed amounts. Moreover, it cannot seek to adopt a different agreement for the reasons discussed herein. Accordingly, Easy Telephone's Complaint should be dismissed.

910534

Respectfully submitted this 29th day of March, 2011.

AT&T FLORIDA



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Exhibit A

**WHOLESALE AGREEMENT****Customer Name: Easy Telephone Services Company**

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Interconnection Agreement

Between

BellSouth Telecommunications, Inc.

and

Easy Telephone Services Company

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**AGREEMENT
GENERAL TERMS AND CONDITIONS**

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and Easy Telephone Services Company (Easy Telephone), a Florida corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or Easy Telephone or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the state of Florida; and

WHEREAS, Easy Telephone is or seeks to become a CLEC authorized to provide telecommunications services in the states of Florida; and

WHEREAS, pursuant to Sections 251 and 252 of the Act; Easy Telephone wishes to purchase certain services from BellSouth; and

WHEREAS, Parties wish to interconnect their facilities, exchange traffic, and perform Local Number Portability (LNP) pursuant to Sections 251 and 252 of the Act as set forth herein; and

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

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

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

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also

be effective thirty (30) days after the date of the last signature executing the amendment.

FCC means the Federal Communications Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

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

1. CLEC Certification

- 1.1 Easy Telephone agrees to provide BellSouth in writing Easy Telephone's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval. Additionally, Easy Telephone shall provide to BellSouth an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.
- 1.2 To the extent Easy Telephone is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Easy Telephone may not purchase services hereunder in that state. Easy Telephone will notify BellSouth in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, BellSouth will file this Agreement in that state, and Easy Telephone may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 7.
- 1.3 Should Easy Telephone's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided in that state shall become due, or BellSouth may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. Easy Telephone shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

2. Term of the Agreement

2.1 The initial term of this Agreement shall be three (3) years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of the initial term of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.

2.3.1 Easy Telephone may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then BellSouth may terminate this Agreement upon sixty (60) days notice to Easy Telephone. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Easy Telephone pursuant to the rates, terms and conditions set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.

2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and BellSouth is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.

2.4 If, at any time during the term of this Agreement, BellSouth is unable to contact Easy Telephone pursuant to the Notices provision hereof or any other contact information provided by Easy Telephone under this Agreement, and there are no active services being provisioned under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to Easy Telephone pursuant to the Notices section hereof.

2.5 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, Easy Telephone is solely responsible for notifying its customers of any discontinuance of service.

3. **Nondiscriminatory Access**

When Easy Telephone purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to others, including its customers. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to Easy Telephone shall be at least equal to that which BellSouth provides to itself and shall be the same for all Telecommunications carriers requesting access to that Network Element. The quality of the interconnection between the network of BellSouth and the network of Easy Telephone shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's customers and service quality as perceived by Easy Telephone.

4 **Court Ordered Requests for Call Detail Records and Other Subscriber Information**

4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for Easy Telephone, or, if applicable under this Agreement, switching, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to Easy Telephone customers. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for Easy Telephone customers for the same length of time it maintains such information for its own customers.

4.2 Subpoenas Directed to Easy Telephone. Where BellSouth is providing resold services to Easy Telephone, or, if applicable under this Agreement, switching,

then Easy Telephone agrees that in those cases where Easy Telephone receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Easy Telephone customers, and where Easy Telephone does not have the requested information, Easy Telephone will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with Section 4.1 above.

- 4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

5 Liability and Indemnification

- 5.1 Easy Telephone Liability. In the event that Easy Telephone 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 Easy Telephone's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of Easy Telephone under this Agreement.
- 5.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to Easy Telephone for any act or omission of another entity providing any services to Easy Telephone.
- 5.3 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to Easy Telephone pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to Easy Telephone pursuant to this Agreement.
- 5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the customer or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first

Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

- 5.3.2 Neither BellSouth nor Easy Telephone shall be liable for damages to the other Party's terminal location, equipment or customer premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 5.3.4 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 5.4 Indemnification for Certain Claims. Except to the extent caused by the indemnified Party's gross negligence or willful misconduct, the Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the customer of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.
- 5.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,

ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

6 Intellectual Property Rights and Indemnification

6.1 No License. Except as expressly set forth in Section 6.2 below, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

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

6.3 Intellectual Property Remedies

6.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 5 above.

6.3.2 Claim of Infringement

- 6.3.2.1 In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party, promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below, shall:
- 6.3.2.2 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 6.3.2.3 obtain a license sufficient to allow such use to continue.
- 6.3.2.4 In the event Sections 6.3.2.2 or 6.3.2.3 above are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 6.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 6.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
- 6.3.5 Dispute Resolution. Any claim arising under Sections 6.1 and 6.2 above shall be excluded from the dispute resolution procedures set forth in Section 8 below and shall be brought in a court of competent jurisdiction.

7 **Proprietary and Confidential Information**

- 7.1 Proprietary and Confidential Information. It may be necessary for BellSouth and Easy Telephone, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form

shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

- 7.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.
- 7.3 Exceptions
- 7.3.1 Recipient will not have an obligation to protect any portion of the Information which:
- 7.3.2 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 7.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. § 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- 7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and

obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

8 Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9 Taxes

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

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party

9.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

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

9.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party

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

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

9.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not applicable, the providing Party shall not bill such taxes or fees to the purchasing

Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be applicable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

- 9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party
- 9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

- 9.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application of or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.

9.5 Additional Provisions Applicable to All Taxes and Fees

Version: 4Q05 Standard ICA
01/25/06

9.5.1 In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

9.5.2 Notwithstanding any provision of this Agreement to the contrary, any administrative, judicial, or other proceeding concerning the application or amount of a tax or fee shall be maintained in accordance with the provisions of this Section and any applicable federal, state or local law governing the resolution of such disputed tax or fee; and under no circumstances shall either Party have the right to bring a dispute related to the application or amount of tax or fee before a regulatory authority.

10 Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Easy Telephone, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 Adoption of Agreements

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

12 Modification of Agreement

12.1 If Easy Telephone changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Easy Telephone to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in

accordance with the state rules governing such modification in company structure if applicable. Additionally, Easy Telephone shall provide BellSouth with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), BellSouth's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

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

12.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Easy Telephone or BellSouth to perform any material terms of this Agreement, Easy Telephone or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

13 Legal Rights

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

14 Indivisibility

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement as set forth in Attachment 4. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

15 Severability

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

16 Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

17 Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

18 Assignments and Transfers

18.1 Any assignment by either Party to any entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. The assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that Easy Telephone is entitled to provide Telecommunications Service. After BellSouth's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, Easy Telephone shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) Easy Telephone pays all bills, past due and current, under this Agreement, or (2) Easy Telephone's assignee expressly assumes liability for payment of such bills.

18.2 In the event that Easy Telephone desires to transfer any services hereunder to another provider of Telecommunications Service, or Easy Telephone desires to assume hereunder any services provisioned by BellSouth to another provider of

Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

19 Notices

- 19.1 Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 10th floor
Birmingham, AL 35203

and

ICS Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375

Easy Telephone Services

Manuel Torrens
5467 North State Road 7
Tamarac, FL 33319
Contact: 954-298-2247
Email: manueltorrens@hotmail.com

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

- 19.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.
- 19.3 Notwithstanding the above, BellSouth will post to BellSouth's Interconnection Web site changes to business processes and policies and shall post to BellSouth's Interconnection Web site or submit through applicable electronic systems, other

service and business related notices not requiring an amendment to this Agreement.

20 Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

21 Headings of No Force or Effect

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

22 Multiple Counterparts

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

23 Filing of Agreement

This Agreement, and any amendments hereto, shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, or as otherwise required by the state and the Parties shall share equally in any applicable fees. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as Easy Telephone is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

24 Compliance with Law

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

25 Necessary Approvals

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 carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

26 Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

27. Rates

27.1 Easy Telephone shall pay the charges set forth in this Agreement. In the event that BellSouth is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, BellSouth reserves the right to back bill Easy Telephone for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement. To the extent a rate element is omitted or no rate is established, BellSouth has the right not to provision such service until the Agreement is amended to include such rate.

27.2 To the extent Easy Telephone requests services not included in this Agreement, such services shall be provisioned pursuant to the rates, terms and conditions set forth in the applicable tariffs or a separately negotiated Agreement, unless the Parties agree to amend this Agreement to include such service prospectively.

28 Rate True-Up

28.1 This section applies to rates that are expressly subject to true-up.

28.2 The rates shall be true-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final and effective order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any discrepancy between the records or disagreement between the Parties regarding the amount of such true-up, the dispute shall be subject to the dispute resolution process set forth in this Agreement.

28.3 A final and effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and Easy Telephone specifically or upon all carriers generally, such as a generic cost proceeding.

29 Survival

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.

30 Entire Agreement

- 30.1 This Agreement means the General Terms and Conditions, the Attachments hereto and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and Easy Telephone acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.
- 30.2 Any reference throughout this Agreement to a tariff, industry guideline, BellSouth's technical guideline or reference, BellSouth business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at BellSouth's Interconnection Web site at: www.interconnection.bellsouth.com. References to state tariffs throughout this Agreement shall be to the tariff for the state in which the services were provisioned; provided, however, that in any state where certain BellSouth services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which BellSouth provides such services as a result of detariffing or deregulation.

General Terms and Conditions
Signature Page

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

BellSouth Telecommunications, Inc.

Easy Telephone Services Company

By: *Kristen E. Shore*

By: *[Signature]*

Name: Kristen E. Shore

Name: MANUEL TORRENT

Title: Director

Title: PRESIDENT

Date: 2/28/06

Date: 2/28/06

Exhibit B

Attachment 7

Billing

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BILLING

1. Payment and Billing Arrangements

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to Easy Telephone under this Agreement. BellSouth will format all bills in CABS Billing Output Specification (CBOS) Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format may change in accordance with applicable industry standards.
 - 1.1.1 For any service(s) BellSouth receives from Easy Telephone, Easy Telephone shall bill BellSouth in CBOS format.
 - 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.
 - 1.1.3 BellSouth will render bills each month on established bill days for each of Easy Telephone's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in BellSouth's Non-Regulated Services Pricing List N6.
 - 1.1.4 BellSouth will bill Easy Telephone in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
 - 1.1.4.1 For resold services, charges for services will be calculated on an individual customer account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill Easy Telephone, and Easy Telephone will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, EUCL charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.
 - 1.1.5 BellSouth will not perform billing and collection services for Easy Telephone as a result of the execution of this Agreement.
- 1.2 Establishing Accounts. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, Easy Telephone will provide the appropriate BellSouth Local

Contract Manager responsible for new CLEC activation, the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide Telecommunications Services, the appropriate OCN for each state as assigned by the NECA, CIC, if applicable, ACNA, if applicable, BellSouth's blanket form LOA, Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, Easy Telephone may not order services under a new account established in accordance with this Section until thirty (30) days after all information specified in this Section is received from Easy Telephone.

- 1.2.1 ACNAs. Easy Telephone shall provide BellSouth with documentation from Telcordia identifying the ACNA assigned to it by Telcordia (as applicable) in the same legal name as reflected in the preamble to this Agreement. Such ACNA will be used by Easy Telephone to order services pursuant to this Agreement and will not be shared by Easy Telephone with another entity.
- 1.2.2 Company Identifiers. If Easy Telephone needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when Easy Telephone has already been conducting business utilizing those Company Identifiers, Easy Telephone shall pay all charges as a result of such change, addition, elimination or conversion to the new Company Identifiers. Such charges include, but are not limited to, all time required to make system updates to all of Easy Telephone's customer records and any other changes to BellSouth systems or Easy Telephone records, and will be handled in a separately negotiated agreement or as otherwise required by BellSouth.
- 1.2.3 Tax Exemption. It is the responsibility of Easy Telephone to provide BellSouth with a properly completed tax exemption certificate at intervals required by the appropriate taxing authorities. A tax exemption certificate must be supplied for each individual Easy Telephone entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to Easy Telephone will not include those taxes or fees from which Easy Telephone is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and Easy Telephone shall pay all applicable taxes and fees. In the event that Easy Telephone believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to BellSouth's receipt of a properly completed exemption certificate, BellSouth shall assign to Easy Telephone its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by BellSouth, BellSouth shall, after receiving a written request from Easy Telephone and at Easy Telephone's sole expense, pursue such refund claim on behalf of Easy Telephone, provided that Easy Telephone promptly reimburses BellSouth for any costs and expenses incurred by

BellSouth in pursuing such refund claim, and provided further that BellSouth shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to Easy Telephone. Easy Telephone shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by Easy Telephone to its customers.

- 1.3 Deposit Policy. Prior to the inauguration of service or, thereafter, upon BellSouth's request, Easy Telephone shall complete the BellSouth Credit Profile (BellSouth form) and provide information to BellSouth regarding Easy Telephone's credit and financial condition. Based on BellSouth's analysis of the BellSouth Credit Profile and other relevant information regarding Easy Telephone's credit and financial condition, BellSouth reserves the right to require Easy Telephone to provide BellSouth with a suitable form of security deposit for Easy Telephone's account(s). If, in BellSouth's sole discretion, circumstances so warrant and/or Easy Telephone's gross monthly billing has increased, BellSouth 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 Easy Telephone's "accounts receivables and proceeds".
- 1.3.1 Security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in BellSouth's sole discretion, some other form of security proposed by Easy Telephone. Any such security deposit shall in no way release Easy Telephone from its obligation to make complete and timely payments of its bill(s). If BellSouth requires Easy Telephone to provide a security deposit, Easy Telephone shall provide such security deposit prior to the inauguration of service or within fifteen (15) days of BellSouth's request, as applicable. Deposit request notices will be sent to Easy Telephone 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 BellSouth's GSST.
- 1.3.2 Security deposits collected under this Section shall not exceed two (2) months' estimated billing. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if Easy Telephone has received service from BellSouth during such period at a level comparable to that anticipated to occur over the next six (6) months. If either Easy Telephone or BellSouth 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, Easy Telephone and BellSouth shall agree on a level of estimated billings based on all relevant information.
- 1.3.3 In the event Easy Telephone fails to provide BellSouth 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 Easy Telephone may be Suspended, Discontinued or Terminated in accordance with the terms of Section 1.5 below. Upon Termination of services, BellSouth shall apply any security deposit to Easy Telephone's final bill for its account(s).

- 1.3.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by Easy Telephone as security under this Agreement, Easy Telephone shall renew such letter of credit or provide BellSouth with evidence that Easy Telephone has obtained a suitable replacement for the letter of credit. If Easy Telephone fails to comply with the foregoing, BellSouth shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for Easy Telephone accounts(s). If Easy Telephone provides a security deposit or additional security deposit in the form of a surety bond as required herein, Easy Telephone shall renew the surety bond or provide BellSouth with evidence that Easy Telephone has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If Easy Telephone fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for Easy Telephone's account(s). If the credit rating of any bonding company that has provided Easy Telephone with a surety bond provided as security hereunder has fallen below B, BellSouth will provide written notice to Easy Telephone that Easy Telephone must provide a replacement bond or other suitable security within fifteen (15) days of BellSouth's written notice. If Easy Telephone fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for Easy Telephone's account(s). Notwithstanding anything contained in this Agreement to the contrary, BellSouth shall be authorized to draw down the full amount of any letter of credit or take action on any surety bond provided by Easy Telephone as security hereunder if Easy Telephone 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.
- 1.4 **Payment Responsibility.** Payment of all charges will be the responsibility of Easy Telephone. Easy Telephone shall pay invoices by utilizing wire transfer services or automatic clearing house services. Easy Telephone shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between Easy Telephone and Easy Telephone's customer.
- 1.4.1 **Payment Due.** Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify BellSouth of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by BellSouth. If the Remittance Information is not received with payment, BellSouth

will be unable to apply amounts paid to Easy Telephone's accounts. In such event, BellSouth shall hold such funds until the Remittance Information is received. If BellSouth does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.

- 1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.
- 1.4.1.2 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth above, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment and/or interest charge shall be due to BellSouth. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of BellSouth's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the BellSouth intrastate Access Services Tariff, or pursuant to the applicable state law as determined by BellSouth. In addition to any applicable late payment and/or interest charges, Easy Telephone may be charged a fee for all returned checks at the rate set forth in Section A2 of BellSouth's GSST or pursuant to the applicable state law.
- 1.5 Discontinuing Service to Easy Telephone. The procedures for discontinuing service to Easy Telephone are as follows:
 - 1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:
 - 1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspend/Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.
 - 1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's customers.
 - 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.

- 1.5.2 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by Easy Telephone of the rules and regulations of BellSouth's tariffs.
- 1.5.3 Suspension. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, BellSouth will provide written notice to Easy Telephone that services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above, or in the case of a security deposit request, in the manner set forth in Section 1.3.1 above: (1) within seven (7) days following such notice for CABS billed services; (2) within fifteen (15) days following such notice for CRIS and IBS billed services; and (3) within seven (7) days following such notice for security deposit requests.
- 1.5.3.1 The Suspension notice shall also provide that all past due charges for CRIS and IBS billed services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CRIS and IBS billed services.
- 1.5.3.2 For CABS billed services, BellSouth will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS billed Services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed services. This Discontinuance notice may be provided at the same time that BellSouth provides the Suspension notice.
- 1.5.4 Discontinuance. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, BellSouth will provide written notice that BellSouth may Discontinue the provision of existing services to Easy Telephone if payment of such amounts, and all other amounts that become past due before Discontinuance, including requested security deposits, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above or in the case of a deposit in accordance with Section 1.3.1 above, within thirty (30) days following such written notice; provided, however, that BellSouth may provide written notice that such existing services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.4.1 below.
- 1.5.4.1 BellSouth may take the action to Discontinue the provision of existing service upon fifteen (15) days from the day after BellSouth provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b)

Easy Telephone has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:

- (1) BellSouth has sent the subject bill(s) to Easy Telephone within seven (7) business days of the bill date(s), verifiable by records maintained by BellSouth:
 - i. in paper or CDROM form via the United States Postal Service (USPS), or
 - ii. in magnetic tape form via overnight delivery, or
 - iii. via electronic transmission; or
- (2) BellSouth has sent the subject bill(s) to Easy Telephone, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

1.5.4.2 In the case of Discontinuance of services, all billed charges, as well as applicable disconnect charges, shall become due.

1.5.4.3 Easy Telephone is solely responsible for notifying the customer of the Discontinuance of service. If, within seven (7) days after Easy Telephone's services have been Discontinued, Easy Telephone pays, by wire transfer, automatic clearing house or cashier's check, all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of BellSouth's GSST, then BellSouth will reestablish service for Easy Telephone.

1.5.5 Termination. If within seven (7) days after Easy Telephone's service has been Discontinued and Easy Telephone has failed to pay all past due charges as described above, then Easy Telephone's service will be Terminated.

2. Billing Disputes

2.1 Easy Telephone shall electronically submit all billing disputes to BellSouth using the form specified by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within five (5) business days of BellSouth's denial, or partial denial, of the billing dispute, if Easy Telephone is not satisfied with BellSouth's resolution of the billing dispute or if no response to the billing dispute has been received by Easy Telephone by such sixtieth (60th) day, Easy Telephone must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute shall pursue dispute resolution in accordance with General Terms and Conditions.

- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 above of a specific amount of money actually billed by BellSouth. The billing dispute must be clearly explained by Easy Telephone and supported by written documentation, which clearly shows the basis for disputing charges. The determination as to whether the billing dispute is clearly explained or clearly shows the basis for disputing charges shall be within BellSouth's sole reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by BellSouth. Claims by Easy Telephone for damages of any kind will not be considered a billing dispute for purposes of this Section. If BellSouth resolves the billing dispute, in whole or in part, in favor of Easy Telephone, any credits and interest due to Easy Telephone as a result thereof shall be applied to Easy Telephone's account by BellSouth upon resolution of the billing dispute.
3. **RAO Hosting**
- 3.1 Centralized Message Distribution System (CMDS) is a national message exchange system administered by Telcordia Technologies (Telcordia) used to transmit alternately billed calls (e.g., credit card, third number and collect) from the Earning Company, as defined herein, to the Billing Company, as defined herein, to permit the Earning Company and the Billing Company to receive appropriate compensation. It is also used to transmit access records from one company to another.
- 3.2 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the CMDS Data Center and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center (Indirect Participants).
- 3.3 RAO Hosting is a hosting relationship where an Indirect Participant sends and receives CMDS eligible messages to and from its Host, who then interfaces, on behalf of the Indirect Participant, with other Direct Participants for distribution and collection of these messages. RAO Hosting also includes the Direct Participant's provision of revenue settlements functions (compensation) for alternately billed calls based upon reports generated by Credit Card and Third Number Settlement (CATS) and Non-InterCompany Settlement (NICS) as described herein. CATS and NICS are collectively referred to as Intercompany Settlements.
- 3.4 The CATS System is a national system administered by Telcordia, used to settle revenues for calls that are sent from one CMDS Direct Participant to another for billing. CATS applies to calls that originate within one Regional Bell Operating Company's (RBOC) territory, as defined at Divestiture, and bill in another RBOC's territory. CATS calculates the amounts due to Earning Companies (i.e., billed revenue less the billing and collection fee). For alternately billed calls, the originating company, whose facilities are used to place the call, is the Earning

Company and the company that puts the charges on the customer's bill is the Billing Company

- 3.5 The NICS is the national system administered by Telcordia that is used in the settlement of revenues for calls that are originated and billed by two (2) different local exchange carriers (LEC) within a single Direct Participant's territory to another for billing. NICS applies to calls involving another LEC where the Earning Company and the Billing Company are located within BellSouth's territory.
- 3.6 RAO Hosting, CATS and NICS services provided to Easy Telephone by BellSouth will be in accordance with the methods and practices regularly applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 3.7 Easy Telephone shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 3.8 Charges or credits, as applicable, will be applied by BellSouth to Easy Telephone on a monthly basis in arrears. Amounts due (excluding adjustments) are due on or before the next bill date.
- 3.9 Easy Telephone must have its own unique hosted RAO code. Where BellSouth is the selected CMDS interfacing host, Easy Telephone must request that BellSouth establish a unique hosted RAO code for Easy Telephone. Such request shall be in writing to the BellSouth RAO Hosting coordinator and must be submitted at least eight (8) weeks prior to provision of services pursuant to this Section. Services shall commence on a date mutually agreed by the Parties.
- 3.10 BellSouth will receive messages from Easy Telephone that are to be processed by BellSouth, another Local Exchange Carrier (LEC) in the BellSouth region or a LEC outside the BellSouth region. Easy Telephone shall send all messages to BellSouth no later than sixty (60) days after the message date.
- 3.11 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from Easy Telephone.
- 3.12 All data received from Easy Telephone that is to be processed or billed by another LEC within the BellSouth region will be distributed to that LEC in accordance with the Agreement(s) in effect between BellSouth and the involved LEC.
- 3.13 All data received from Easy Telephone that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) in effect between BellSouth and its connecting contractor.

- 3.14 BellSouth will receive messages from the CMDS network that are destined to be processed by Easy Telephone and will forward them to Easy Telephone on a daily basis for processing.
- 3.15 Transmission of message data between BellSouth and Easy Telephone will be distributed via FTP mailbox. It will be created on a daily basis Monday through Friday, except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. If BellSouth determines the Secure FTP Mailbox is nearing capacity levels, BellSouth may move Easy Telephone to CONNECT:Direct file delivery.
- 3.15.1 If Easy Telephone is moved to CONNECT:Direct, data circuits (private line or dial-up) may be required between BellSouth and Easy Telephone for the purpose of data transmission. Where a dedicated line is required, Easy Telephone will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. Easy Telephone will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to Easy Telephone. Additionally, all message toll charges associated with the use of the dial circuit by Easy Telephone will be the responsibility of Easy Telephone. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on the Easy Telephone end for the purpose of data transmission will be the responsibility of Easy Telephone.
- 3.15.2 If Easy Telephone utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of Easy Telephone.
- 3.16 All messages and related data exchanged between BellSouth and Easy Telephone will be EMI formatted records and packed between appropriate EMI header and trailer records in accordance with accepted industry standards.
- 3.17 Easy Telephone will maintain recorded message detail necessary to recreate files provided to BellSouth for a period of three (3) calendar months beyond the related message dates.
- 3.18 Should it become necessary for Easy Telephone to send data to BellSouth more than sixty (60) days past the message date(s), Easy Telephone will notify BellSouth in advance of the transmission of the data. BellSouth will work with its connecting contractor and/or Easy Telephone, where necessary, to notify all affected LECs.

- 3.19 In the event that data to be exchanged between the two (2) Parties should become lost or destroyed, the Party responsible for creating the data will make every effort to restore and retransmit such data.
- 3.20 Should an error be detected by the EMI format edits performed by BellSouth on data received from Easy Telephone, the entire pack containing the affected data will not be processed by BellSouth. BellSouth will notify Easy Telephone of the error. Easy Telephone will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, Easy Telephone will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.
- 3.21 In association with message distribution service, BellSouth will provide Easy Telephone with associated intercompany settlements reports (CATS and NICS) as appropriate.
- 3.22 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.
- 3.23 Intercompany Settlements Messages
- 3.23.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by Easy Telephone as a facilities based provider of local exchange Telecommunications Services.
- 3.23.2 BellSouth will receive the monthly NICS and CATS reports from Telcordia on behalf of Easy Telephone and will distribute copies of these reports to Easy Telephone on a monthly basis.
- 3.23.3 Through CATS, BellSouth will collect the revenue earned by Easy Telephone from the RBOC in whose territory the messages are billed, less a per message billing and collection fee of five cents (\$0.05), or such other amount as may be approved by the Direct Participants and Telcordia, on behalf of Easy Telephone. BellSouth will remit the revenue billed by Easy Telephone to the RBOC in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), or such other amount as may be approved by the Direct Participants and Telcordia, on behalf of Easy Telephone. These two (2) amounts will be netted together by BellSouth and the resulting charge or credit issued to Easy Telephone via a CABS miscellaneous bill on a monthly basis in arrears.
- 3.23.4 Through NICS, BellSouth will collect the revenue earned by Easy Telephone within the BellSouth territory from another LEC also within the BellSouth territory where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of Easy Telephone. BellSouth will remit the revenue billed by Easy Telephone within the BellSouth region to the LEC also

within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two (2) amounts will be netted together by BellSouth and the resulting charge or credit issued to Easy Telephone via a CABS miscellaneous bill on a monthly basis in arrears.

3.23.5 BellSouth and Easy Telephone agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.

3.24 Rates. Rates for CMDS are as set forth in Exhibit A. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

4. Optional Daily Usage File

4.1 Upon written request from Easy Telephone, BellSouth will provide the ODUF Services to Easy Telephone pursuant to the terms and conditions set forth in this section.

4.2 Easy Telephone shall furnish all relevant information required by BellSouth for the provision of the ODUF.

4.3 The ODUF feed provides Easy Telephone messages that were carried over the BellSouth network and processed by BellSouth for Easy Telephone.

4.4 Charges for the ODUF Service will appear on Easy Telephone's monthly bills for the previous month's usage in arrears.

4.5 The ODUF feed will contain both rated and unrated messages. All messages will be in the standard ATIS EMI record format.

4.6 Messages that error in the billing system of Easy Telephone will be the responsibility of Easy Telephone. If, however, Easy Telephone should encounter significant volumes of errored messages that prevent processing by Easy Telephone within its systems, BellSouth will work with Easy Telephone to determine the source of the errors and the appropriate resolution.

4.7 ODUF Specifications

4.7.1 ODUF Messages to be Transmitted.

4.7.2 The following messages recorded by BellSouth will be transmitted to Easy Telephone:

4.7.2.1 Message recording for per use/per activation type services (examples: Three-Way Calling, Verify, Interrupt, Call Return, etc.)

- 4.7.2.2 Measured local calls;
- 4.7.2.3 Directory Assistance messages;
- 4.7.2.4 IntraLATA Toll;
- 4.7.2.5 WATS and 800 Service;
- 4.7.2.6 N11;
- 4.7.2.7 Information Service Provider Messages;
- 4.7.2.8 Operator Services Messages;
- 4.7.2.9 Operator Services Message Attempted Calls;
- 4.7.2.10 Credit/Cancel Records; and
- 4.7.2.11 Usage for Mail Message Service
- 4.7.3 Rated Incollects (messages BellSouth receives from other revenue accounting offices) also appear on ODUF. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.
- 4.7.4 BellSouth will perform duplicate record checks on records processed to ODUF. Any duplicate messages detected will be deleted and not sent to Easy Telephone.
- 4.7.5 In the event that Easy Telephone detects a duplicate on ODUF they receive from BellSouth, Easy Telephone will drop the duplicate message and will not return the duplicate to BellSouth.
- 4.7.6 ODUF Physical File Characteristics
 - 4.7.6.1 ODUF will be distributed to Easy Telephone via FTP. The ODUF feed will be a variable block format. The data on the ODUF feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one (1) dataset per workday per OCN. If BellSouth determines the Secure FTP Mailbox is nearing capacity levels, BellSouth may move the Easy Telephone to CONNECT:Direct file delivery.
 - 4.7.6.2 If the Easy Telephone is moved to CONNECT:Direct, data circuits (private line or dial-up) will be required between BellSouth and Easy Telephone for the purpose of data transmission. Where a dedicated line is required, Easy Telephone will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. Easy Telephone will also be responsible for any

charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit messages successfully on an ongoing basis will be negotiated on an individual case basis. Any costs incurred for such equipment will be Easy Telephone's responsibility. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to Easy Telephone. Additionally, all message toll charges associated with the use of the dial circuit by Easy Telephone will be the responsibility of Easy Telephone. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on Easy Telephone's end for the purpose of data transmission will be the responsibility of Easy Telephone.

- 4.7.6.3 If Easy Telephone utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of Easy Telephone.
- 4.7.7 ODUF Packing Specifications
- 4.7.7.1 The data will be packed using ATIS EMI records. A pack will contain a minimum of one (1) message record or a maximum of ninety-nine thousand nine hundred and ninety-nine (99,999) message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of ninety nine (99) packs and a minimum of one (1) pack.
- 4.7.7.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to Easy Telephone which BellSouth RAO is sending the message. BellSouth and Easy Telephone will use the invoice sequencing to control data exchange. Easy Telephone will notify BellSouth of sequence failures identified by Easy Telephone and BellSouth will resend the data as appropriate.
- 4.7.8 ODUF Pack Rejection. Easy Telephone will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (e.g. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI error codes will be used. Easy Telephone will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to Easy Telephone by BellSouth.
- 4.7.9 ODUF Control Data. Easy Telephone will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate Easy Telephone's receipt of the pack and acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by Easy Telephone for reasons stated in the above section.

4.7.10 **ODUF Testing:** Upon request from Easy Telephone, BellSouth shall send ODUF test files to Easy Telephone. The Parties agree to review and discuss the ODUF content and/or format. For testing of usage results, BellSouth shall request that Easy Telephone set up a production (live) file. The live test may consist of Easy Telephone's employees making test calls for the types of services Easy Telephone requests on ODUF. These test calls are logged by Easy Telephone, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within thirty (30) days from the date on which the initial test file was sent.

5 **Access Daily Usage File (ADUF)**

5.1 Upon written request from Easy Telephone, BellSouth will provide the ADUF Services to Easy Telephone pursuant to the terms and conditions set forth in this section.

5.2 Easy Telephone shall furnish all relevant information required by BellSouth for the provision of ADUF Services.

5.3 The ADUF provides Easy Telephone originating and terminating access and third party messages associated with a port that Easy Telephone has purchased from BellSouth.

5.4 Charges for ADUF Services will appear on Easy Telephone's monthly bills for the previous month's usage in arrears.

5.5 Messages that error in the billing system of Easy Telephone will be the responsibility of Easy Telephone. If, however, Easy Telephone should encounter significant volumes of errored messages that prevent processing by Easy Telephone within its systems, BellSouth will work with Easy Telephone to determine the source of the errors and the appropriate resolution.

5.6 **ADUF Messages to be Transmitted**

5.6.1 The following messages recorded by BellSouth will be transmitted to Easy Telephone:

5.6.2 Recorded originating and terminating interstate and intrastate access records associated with Wholesale Switch Port Services and Wholesale Local Platform Services.

5.6.3 Recorded terminating access records for undetermined jurisdiction access records associated with Wholesale Switch Port Services and Wholesale Local Platform Services.

5.6.4 BellSouth will perform duplicate record checks on records processed to ADUF. Any duplicate messages detected will be dropped and not sent to Easy Telephone.

- 5.6.5 In the event that Easy Telephone detects a duplicate on ADUF they receive from BellSouth, Easy Telephone will drop the duplicate message and will not return the duplicate to BellSouth.
- 5.7 ADUF Physical File Characteristics
- 5.7.1 ADUF will be distributed to Easy Telephone via Secure FTP Mailbox. The ADUF feed will be a fixed block format. The data on the ADUF feed will be in a non-compacted EMI format (210 bytes). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one (1) dataset per workday per OCN. If BellSouth determines the Secure FTP Mailbox is nearing capacity levels, BellSouth may move the Easy Telephone to CONNECT:Direct file delivery.
- 5.7.2 If the Easy Telephone is moved to CONNECT:Direct, data circuits (private line or dial-up) will be required between BellSouth and Easy Telephone for the purpose of data transmission. Where a dedicated line is required, Easy Telephone will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. Easy Telephone will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit messages successfully on an ongoing basis will be negotiated on an individual case basis. Any costs incurred for such equipment will be Easy Telephone's responsibility. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to Easy Telephone. Additionally, all message toll charges associated with the use of the dial circuit by Easy Telephone will be the responsibility of Easy Telephone. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on Easy Telephone's end for the purpose of data transmission will be the responsibility of Easy Telephone.
- 5.7.2.1 If Easy Telephone utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of Easy Telephone.
- 5.7.3 ADUF Packing Specifications
- 5.7.3.1 The data will be packed using ATIS EMI records. A pack will contain a minimum of one (1) message record or a maximum of ninety-nine thousand nine hundred and ninety-nine (99,999) message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of ninety-nine (99) packs and a minimum of one (1) pack.
- 5.7.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to Easy Telephone which BellSouth RAO

is sending the message. BellSouth and Easy Telephone will use the invoice sequencing to control data exchange. Easy Telephone will notify BellSouth of sequence failures identified by Easy Telephone and BellSouth will resend the data as appropriate.

- 5.7.4 **ADUF Pack Rejection.** Easy Telephone will notify BellSouth within one (1) business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (e.g. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI error codes will be used. Easy Telephone will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to Easy Telephone by BellSouth.
- 5.7.5 **ADUF Control Data.** Easy Telephone will send one (1) confirmation record per pack that is received from BellSouth. This confirmation record will indicate Easy Telephone's receipt of the pack and acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by Easy Telephone for reasons stated in the above section.
- 5.7.6 **ADUF Testing.** Upon request from Easy Telephone, BellSouth shall send a test file of generic data to Easy Telephone via CONNECT:Direct or Text File via e-mail. The Parties agree to review and discuss the test file's content and/or format.
6. **Rates for ODUF and ADUF**
- 6.1 The rates for ODUF and ADUF are as set forth in Exhibit A.

DUF & CMDS - Florida										Attachment: 7 Edt A					
CATEGORY	RATE ELEMENTS	Inter m	Zone	SCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electroni- c 1st	Incremental Charge - Manual Svc Order vs. Electroni- c Add'l	Incremental Charge - Manual Svc Order vs. Electroni- c 1st	Incremental Charge - Manual Svc Order vs. Electroni- c Add'l
						Rec	Nonrecurring		Nonrecurring Disconnect						
							First	Add'l	First	Add'l	SOMEK	SOMAN	SOMAN	SOMAN	SOMAN
ODUF/ADUF/CMDS															
	ACCESS DAILY USAGE FILE (ADUF)														
	ADUF: Message Processing, per message					0.001698									
	ADUF: Data Transmission (CONNECT:DIRECT), per message					0.0001246									
	OPTIONAL DAILY USAGE FILE (ODUF)														
	ODUF: Recording, per message					0.0000071									
	ODUF: Message Processing, per message					0.002148									
	ODUF: Message Processing, per Magnetic Tape provisioned					35.91									
	ODUF: Data Transmission (CONNECT:DIRECT), per message					0.00010376									
	CENTRALIZED MESSAGE DISTRIBUTION SERVICE (CMDS)														
	CMDS: Message Processing, per message					0.004									
	CMDS: Data Transmission (CONNECT:DIRECT), per message					0.001									

Confidential Exhibit C
Filed under a Notice of Intent 3/29/11

Confidential Exhibit D
Filed under a Notice of Intent 3/29/11