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November 30, 2012

RECEIVED

NOV 30 2012

PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: Petition of Cumberland Cellular, Inc. d/b/a Duo County Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

Dear Mr. Derouen:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky is one (1) original and ten (10) copies of the arbitration petition of Cumberland Cellular, Inc. d/b/a/ Duo County Telecom in regard to the above referenced matter.

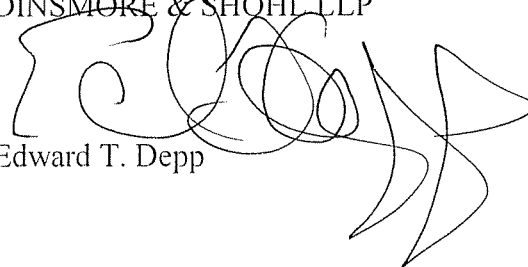
Please return a file-stamped copy of the arbitration petition to our courier.

Thank you and if you have any questions with respect to this matter, please call me.

Sincerely,

DINSMORE & SHOHL LLP

Edward T. Depp



ETD/kwi
Enclosures

Jeff Derouen
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November 30, 2012

cc: Eric Peterson
Bob Sutherland
Mary K. Keyer, Esq.
Jerrad T. Howard, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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NOV 30 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

Petition of Cumberland Cellular, Inc. d/b/a)
Duo County Telecom for Arbitration of)
Certain Terms and Conditions of Proposed)
Interconnection Agreement with BellSouth)
Telecommunications, Inc., d/b/a AT&T)
Kentucky, Pursuant to the Communications)
Act of 1934, as Amended by the)
Telecommunications Act of 1996)

Case No. 2012-_____

**ARBITRATION PETITION OF
CUMBERLAND CELLULAR, INC., D/B/A DUO COUNTY TELECOM**

Cumberland Cellular, Inc., d/b/a Duo County Telecom ("Duo County Telecom"), by counsel, petitions the Public Service Commission of the Commonwealth of Kentucky (the "Commission") pursuant to Section 252(b)¹ of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), KRS Chapter 278, and the regulations promulgated thereunder, to arbitrate certain terms and conditions of a proposed interconnection agreement between Duo County Telecom and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky").

PARTIES

1. Petitioner Duo County Telecom's full name and its official business address are as follows:

Cumberland Cellular, Inc., d/b/a Duo County Telecom
P.O. Box 80
Jamestown, Kentucky 42629

¹ 47 U.S.C. § 252(b).

Duo County Telecom is a Kentucky corporation, and it is authorized by the Commission to provide competitive local exchange service in Kentucky. Duo County Telecom is, and at all times relevant has been, a competitive local exchange carrier ("CLEC") under the terms of the Act.

2. The name, address, and contact number for Duo County Telecom's representatives in this proceeding are as follows:

John E. Selent
Edward T. Depp
Jerrad T. Howard
DINSMORE & SHOHL LLP
101 South Fifth Street
Suite 2500
Louisville, Kentucky 40202
(502) 540-2300 (Telephone)
(502) 585-2207 (Facsimile)

3. Respondent AT&T Kentucky's full name and its official business address are as follows.

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky
675 West Peachtree Street, NW
Suite 4514
Atlanta, Georgia 30375

AT&T Kentucky's principal place of business in Kentucky is as follows.

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky
601 West Chestnut Street
Room 407
Louisville, Kentucky 40203

AT&T Kentucky is a foreign corporation registered to do business in Kentucky. AT&T Kentucky is an incumbent local exchange carrier ("ILEC") under the terms of the Act. Within its operating territory, AT&T Kentucky has, at all relevant times, been a dominant provider of telephone exchange service.

4. The name, address, and contact number(s) for AT&T Kentucky's representatives in this proceeding are as follows:

Jennifer Bracken (jb2560@att.com)
Eric Peterson (jp1856@att.com)
Lead Interconnection Agreement Managers
AT&T Kentucky
311 S. Akard 9th Floor
Dallas, TX 75202
(214) 464-2006

Mary K. Keyer (mk3978@att.com)
General Counsel
AT&T Kentucky
601 West Chestnut Street
Room 407
Louisville, Kentucky 40203
(502) 582-8219

M. Robert Sutherland (ms6611@att.com)
General Attorney-Wholesale Regulatory
AT&T Kentucky
(404) 927-9058

JURISDICTION

5. Pursuant to section 252(b) of the Act, parties to an interconnection negotiation may petition the Commission for arbitration of any open issue(s) that cannot be resolved by negotiation. 47 U.S.C. § 252(b). Either party may seek arbitration during the period between the 135th day and the 160th day, inclusive, after the date the ILEC received the request for negotiation. *Id.*

6. Duo County Telecom provided AT&T Kentucky with a bona fide request to negotiate an interconnection agreement, and Duo County Telecom and AT&T Kentucky have agreed that, for the purpose of measuring the arbitration timeframe, that request was received on June 25, 2012. Consequently, the statutory window for filing a formal request for arbitration opened on November

6, 2012 and ends at the close of business on November 30, 2012. Therefore, this petition is timely filed.

7. Section 252(b)(4)(c) of the Act requires the Commission to render a decision in this proceeding within nine (9) months after the date upon which negotiations for the interconnection agreement began, unless the parties waive this deadline. Because interconnection negotiations began on June 25, 2012, the Act requires the Commission to render a decision in this matter not later than March 25, 2013, unless the parties waive that deadline.

8. In addition, KRS 278.030 mandates that "[e]very utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service."

9. KRS 278.260(1) further mandates that

The [C]ommission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person... that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory or that any service is inadequate or cannot be obtained, the [C]ommission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.

ARBITRATION ISSUES

A. Negotiation of Proposed Interconnection Agreement

10. As a result of the imminent closing of the Act's statutory arbitration window, Duo County Telecom is seeking arbitration of all issue(s) that remain subject to some discussion between it and AT&T Kentucky. Duo County Telecom remains hopeful that all issue(s) will be resolved before hearing as a result of continued negotiation efforts between the parties.

11. While the parties have worked cooperatively to exhaustively identify all disputed issues subject to this arbitration, it is possible that additional issues or a reframing of the issues may arise while the parties continue their negotiations. Accordingly, Duo County Telecom reserves the right to amend, supplement, or modify its petition and/or issues list if additional disputed issues are identified or existing disputed issues are modified during the course of negotiations.

12. Pursuant to 47 U.S.C. § 252(b)(2)(A)(i), and in order to highlight the disputed issues, Duo County Telecom has attached a "composite" interconnection agreement identifying the specific language dispute(s) presented to the Commission for decision. (*See Exhibit 1, which is incorporated herein by reference as if fully set forth.*) Normal font text signifies language upon which the parties agree and which Duo County Telecom requests that the Commission consider resolved; *bold, italicized* language signifies language proposed by Duo County Telecom and opposed by AT&T Kentucky; and **bold, underlined** language signifies language proposed by AT&T Kentucky and opposed by Duo County Telecom.

13. Pursuant to 47 U.S.C. § 252(b)(2)(A)(i)-(ii), and in order to further facilitate review of the disputed issue(s) and the parties' positions with respect to the issue(s), Duo County Telecom has also attached an issues matrix identifying the issue(s) in dispute, the affected section(s) of the agreement, each party's proposed agreement language, and each party's position with respect to the issue(s). (*See Exhibit 2, which is incorporated herein by reference as if fully set forth.*) Duo County Telecom notes that the summary of AT&T Kentucky's position was prepared by Duo County Telecom and is representative of Duo County Telecom's understanding of AT&T Kentucky's position related to each issue based upon the negotiations that have occurred between the parties to date. Duo County Telecom anticipates that AT&T Kentucky may supplement or clarify its positions in its response to this petition.

14. Pursuant to 47 U.S.C. § 252(b)(2)(B), Duo County Telecom is providing a copy of this petition and the accompanying documentation to AT&T Kentucky not later than the day on which this petition is being filed with the Commission.

B. Request for Compensation for Interim Services

15. Duo County has been furnishing interim services to AT&T (and billing AT&T for those interim services) since January 24, 2008. Though the parties have attempted to negotiate language permitting Duo County's recovery for these interim services, to date, these negotiations have not been fruitful, and AT&T still has not paid for these services at the applicable billed tariff rates. Accordingly and for purposes of clarity, pursuant to KRS 278.030, the filed rate doctrine as contained in KRS 278.160, and other applicable state and federal law, Duo County demands compensation for the interim services provided to AT&T for the period between January 24, 2008 and the date of the Commission's approval of the proposed interconnection agreement. Duo County further notes that the interim services it has provided, and for which it seeks compensation, are the same services that are the subject of dispute in this arbitration. Moreover, the measure of compensation that Duo County seeks for these interim services is the same as what Duo County proposes in connection with the agreement that is the subject of this petition.

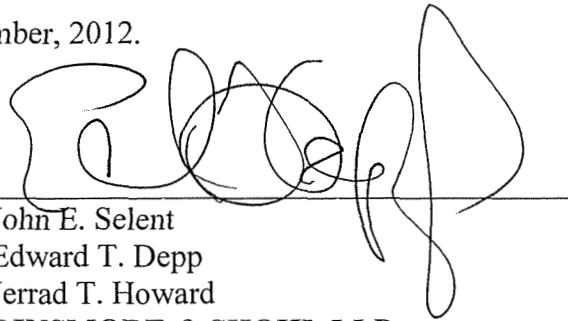
REQUEST FOR RELIEF

WHEREFORE, Duo County Telecom respectfully requests that the Commission grant the following relief:

- A. Pursuant to 47 U.S.C. § 252(b)(3), order AT&T Kentucky to respond to this petition within twenty-five (25) days after the date this petition was filed at the Commission;
- B. Resolve the outstanding issues between the parties as set forth in this petition;
- C. Resolve all such outstanding issues in favor of Duo County Telecom;

- D. Order AT&T Kentucky to execute an interconnection agreement consistent with the Commission's rulings in this matter;
- E. Order AT&T Kentucky to remit payment for all past due interim interconnection service fees owed to Duo County Telecom at the rates set forth in Duo County's filed and approved tariffs, which are the same rates Duo County proposes in the draft interconnection agreement or, alternatively, at an appropriate rate as set forth by the Commission; and
- E. Take such other and further action and order such relief as it deems appropriate under the circumstances.

Respectfully submitted this 30th day of November, 2012.



John E. Selent
Edward T. Depp
Jerrad T. Howard
DINSMORE & SHOHL LLP
101 South Fifth Street
Suite 2500
Louisville, Kentucky 40202
(502) 540-2300 (Telephone)
(502) 585-2207 (Facsimile)

Counsel to Duo County Telecom

CERTIFICATE OF SERVICE

Pursuant to 47 U.S.C. § 252(b)(2)(B), I hereby certify that a copy of the foregoing was served this 30th day of November, 2012, to the following individuals:

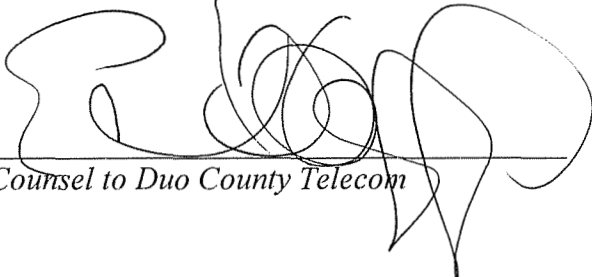
Via U.S. mail and email:

Jennifer Bracken (jb2560@att.com)
Eric Peterson (jp1856@att.com)
Lead Interconnection Agreement Managers
AT&T Kentucky
311 S, Akard 9th Floor
Dallas, TX 75202
(214) 464-2006
Lead Negotiator for AT&T Kentucky

Mary K. Keyer, Esq. (mk3978@att.com)
AT&T Kentucky
601 West Chestnut Street
Room 407
Louisville, Kentucky 40203
General Counsel of AT&T Kentucky

Via email only:

Bob Sutherland, Esq. (ms6611@att.com)
AT&T Kentucky
Counsel for AT&T Kentucky


Counsel to Duo County Telecom

GENERAL TERMS AND CONDITIONS

Bold/Underline=AT&T proposed language that DUO disagrees with

Bold/Italic=DUO proposed language that AT&T disagrees with

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**TRAFFIC EXCHANGE AGREEMENT FOR INTRALATA TOLL CALLS
UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Traffic Exchange Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), by and between BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T KENTUCKY"), and Cumberland Cellular, Inc. d/b/a Duo County Telecom ("CLEC"), a Kentucky corporation, shall apply to the State of Kentucky.

WHEREAS, the Parties are exchanging traffic pursuant to the terms and conditions in Attachment 01: Non-Competing CLEC Toll Only Traffic, in order to provide Telephone Exchange Services and Exchange Access to residential and business End Users in Kentucky; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will exchange IntraLATA Toll Traffic, as required by the Telecommunications Act of 1996 and Applicable Law as specifically set forth herein;

NOW, THEREFORE, the Parties hereby agree as follows:

1.0 Introduction

1.1 This Agreement is composed of the foregoing recitals, the General Terms and Conditions (GT&C), set forth below, and certain Attachments, Schedules, Exhibits and Addenda immediately following this GT&C, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement. This Agreement is only applicable in the scenarios in which CLEC is not competing with AT&T KENTUCKY in AT&T KENTUCKY's territory and is only for the purposes of compensation of such calls.

2.0 Definitions

2.1 "Accessible Letter(s)" means the correspondence used to communicate pertinent information regarding AT&T KENTUCKY to the CLEC community and is (are) provided via posting to the AT&T CLEC Online website.

2.2 "Act" means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.

2.3 "Affiliate" is as defined in the Act.

2.4 "Alternate Billing Service (ABS)" or "Alternately Billed Traffic (ABT)", means the service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS/ABT calls: calling card, collect and third number billed calls.

2.5 "Applicable Law" means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.

2.6 "AT&T Inc." (AT&T) means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T ILLINOIS; Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA; Michigan Bell Telephone Company d/b/a AT&T MICHIGAN; Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale; The Ohio Bell Telephone Company d/b/a AT&T OHIO; Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA; The Southern New England Telephone Company d/b/a AT&T CONNECTICUT; Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA and/or AT&T TEXAS, and/or Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only.

2.7 "AT&T KENTUCKY" means the AT&T owned ILEC doing business in Kentucky.

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Bold/Italic=DUO proposed language that AT&T disagrees with

- 2.8 "Audited Party" means the Party being audited by the Auditing Party.
- 2.9 "Auditing Party" means the Party conducting an audit of the Audited Party's books, records, data and other documents.
- 2.10 "Automated Message Accounting (AMA)" means the structure that is inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.
- 2.11 "Bill Due Date" means thirty (30) calendar days from the bill date.
- 2.12 "Billing Company" is the company that bills End Users for the charges incurred in transported calls. "Billed Party" means the recipient Party of a bill rendered from the Billing Party.
- 2.13 "Billing Party" means the Party rendering a bill.
- 2.14 "Business Day" means Monday through Friday, excluding holidays on which AT&T KENTUCKY does not provision new retail services and products.
- 2.15 "CABS" means the CLEC Access Billing System.
- 2.16 "Centralized Message Distribution System (CMDS)" means the industry-wide data collection system, which handles the daily exchange of message details between CMDS participating telephone companies (also known as CMDS Direct Participants). AT&T KENTUCKY is a CMDS Direct Participant.
- 2.17 "Central Office Switch (CO)" means the switching entity within the public switched Telecommunications network, including but not limited to:
- 2.17.1 "End Office Switch" or "End Office" means the switching machine that directly terminates traffic to and receives traffic from purchasers of local Exchange Services. An End Office Switch does not include a PBX.
- 2.17.2 "Tandem Office Switch" or "Tandem(s)" are used to connect and switch Trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 2.18 "Claim" means any pending or threatened claim, action, proceeding or suit.
- 2.19 "Commission" means the Kentucky Public Service Commission (KPSC);
- 2.20 "Common Channel Signaling (CCS)" means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 2.21 "Competitive Local Exchange Carrier (CLEC)" means a telephone company certificated by the Commission to provide local Exchange Service either within AT&T KENTUCKY's franchised area and/or the franchised area of another ILEC.
- 2.22 "Consequential Damages" means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and any other damages typically considered consequential damages under Applicable Law, regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.
- 2.23 "Delaying Event" means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 2.23.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;

Bold/Underline=AT&T proposed language that DUO disagrees with

Bold/Italic=DUO proposed language that AT&T disagrees with

- 2.23.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
- 2.23.3 any Force Majeure Event.
- 2.24 "Disputed Amounts" as used in Section 9 below, means the amount that the Disputing Party contends is incorrectly billed.
- 2.25 "Disputing Party" as used in Section 9 below, means the Party to this Agreement that is disputing an amount in a bill rendered by the Billing Party.
- 2.26 "Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.
- 2.27 "End User(s)" means a Third Party residence or business that subscribes to Telecommunications Services provided by either of the Parties at retail. As used herein, the term "End User(s)" does not include either of the Parties to this Agreement with respect to this Agreement.
- 2.28 "Exchange Access" means as defined in the Act.
- 2.29 "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 2.30 "Exchange Message Interface (EMI)" (formerly Exchange Message Record "EMR") means the standard used for exchange of Telecommunications message information among Telecommunications CLECs for billable, non-billable, CABS, sample, settlement and study data. EMI format is contained in Telcordia Practice BR-010-200-010, CRIS Exchange Message Record and the Alliance for Telecommunications Industry Solutions (ATIS) document, ATIS-0406000-xxxx (xxxx refers to the year of publication).
- 2.31 "Exchange Service" means Telephone Exchange Service as defined in the Act.
- 2.32 "FCC" means the Federal Communications Commission.
- 2.33 "Feature Group D (FGD)" means the access available to all customers, providing Trunk-Side access to a Party's End Office Switches with an associated uniform 101XXXX access code for customer's use in originating and terminating communications.
- 2.34 "Fraud Monitoring System" means an off-line administration system that monitors suspected occurrences of ABT-related fraud.
- 2.35 "Governmental Authority" means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 2.36 "Incumbent Local Exchange Carrier (ILEC)" is as defined in the Act.
- 2.37 "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 2.38 "Interconnection" is as defined in the Act.
- 2.39 "Interexchange Carrier (IXC)" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 2.40 "InterLATA" is as defined in the Act.
- 2.41 "ISP-Bound Traffic" means Telecommunications traffic, in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CLEC Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean Telecommunications traffic exchanged between CLEC and AT&T KENTUCKY in which the originating End User of one Party and the ISP served by the other Party are:

2.41.1 both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the Commission or regulatory agency; or

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2.41.2 both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.

- 2.42 "IntraLATA Toll Traffic" means the IntraLATA traffic, regardless of the transport protocol method, between two locations within one LATA where one of the locations lies outside of the mandatory local calling area as defined by the Commission approved tariff of the incumbent local exchange carrier
- 2.43 "Late Payment Charge" means the charge that is applied when a billed Party fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from the billed Party after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by the billing Party as of the Bill Due Date or if the CLEC does not submit the Remittance Information.
- 2.44 "LEC-carried" means the transport of calls or messages on a CLEC's network.
- 2.45 "Line Information Data Base (LIDB)" means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers.
- 2.46 "Local Access and Transport Area (LATA)" is as defined in the Act.
- 2.47 "Local Exchange Carrier (LEC)" is as defined in the Act.
- 2.48 "Local Exchange Routing Guide (LERG)" means the Telcordia Reference document used by Telecommunications CLECs to identify NPA-NXX routing and homing information as well as Network element and equipment designations.
- 2.49 "Multiple Exchange CLEC Access Billing" or "MECAB" means the document prepared by the Billing Committee of the OBF, which functions under the auspices of the CLEC Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by ATIS as ATIS/OBF-MECAB-Issue 6, February 1998, contains the recommended guidelines for the billing of access services provided to an IXC by two (2) or more LECs, or by one LEC in two (2) or more states within a single LATA.
- 2.50 "Multiple Exchange Carriers Ordering and Design" or "MECOD" means the Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee of the OBF, which functions under the auspices of the Carrier Liaison Committee of ATIS. The MECOD document, published by ATIS as ATIS/OBF-MECAB-Issue 3, February 1993, establishes methods for processing orders for access service which is to be provided to an IXC by two (2) or more telecommunications providers.
- 2.51 "Meet-Point Billing (MPB)" means the billing associated with interconnection of facilities between two (2) or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 2.52 "Multiple Bill/Single Tariff" means the billing method used when Switched Exchange Access Services is jointly provided by the Parties. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates.
- 2.53 "Network Data Mover (NDM)" or "Connect Direct" means the industry standard protocol for transferring information electrically.
- 2.54 "Non-Paying Party" is the Party that has not made payment by the Bill Due Date of all amounts, other than Disputed Amounts, within the bill rendered by the Billing Party.
- 2.55 "North American Numbering Plan (NANP)" means the numbering architecture in which every station in the NANP Area is identified by a unique ten (10)-digit address consisting of a three (3)-digit NPA code, a three (3)-digit central office code of the form NXX, and a four (4)-digit line number of the form XXXX.
- 2.56 "Notice" is official correspondence between the Parties sent in accordance with Notices Section 16 of this General

Terms and Conditions.

- 2.57 "Numbering Plan Area (NPA)", also called area code, means the three (3)-digit code that occupies the A, B, C positions in the ten (10)-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits two (2) through nine (9) and X represents any digit zero (0) through nine (9). In the NANP, NPAs are classified as either geographic or non-geographic: a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area; b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, (e.g., 800).
- 2.58 "NXX" or "Central Office Code" is the three (3)-digit switch entity indicator that is defined by the fourth (4th) through sixth (6th) digits of a ten (10)-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 2.59 "Operating Company Number (OCN)" means the numeric Company Code assigned by NECA identifying local exchange carrier.
- 2.60 "Ordering and Billing Forum (OBF)" means the forum comprised of local telephone companies and inter-exchange CLECs (IXCs), whose responsibility is to create and document Telecommunication industry guidelines and standards.
- 2.61 "Party" means either CLEC or AT&T KENTUCKY. "Parties" means both CLEC and AT&T KENTUCKY.
- 2.62 "Past Due" means when the Billed Party fails to remit payment for any charges (other than Disputed Amounts) by the Bill Due Date, or if payment for any portion of the charges (other than Disputed Amounts) is received from the Billed Party after the Bill Due Date, or if payment for any portion of the charges (other than Disputed Amounts) is received in funds which are not immediately available to the Billing Party as of the Bill Due Date (individually and collectively means Past Due).
- 2.63 "Person" means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 2.64 "Rate Center Area" means the following in each applicable area:
2.64.1 "Rate Center" means a specific geographic location identified by vertical and horizontal coordinates and is associated with a telephone company's central office switch. These coordinates are used to calculate mileage for interLATA and intraLATA toll billing and intercompany settlement purposes.
- 2.65 "Rating Point" means the V&H coordinates associated with a particular telephone number for rating purposes.
- 2.66 "Remittance Information" means the information that must specify the Billing Account Numbers (BANs) paid; invoices paid and the amount to be applied to each BAN and invoice.
- 2.67 "Routing Point" means the location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.
- 2.68 "Service Start Date" means the date on which services were first supplied under this Agreement.
- 2.69 "Service Switching Point (SSP)" means the telephone Central Office Switch equipped with a Signaling System 7 (SS7) interface.
- 2.70 "Signaling System 7 (SS7)" means a signaling protocol used by the CCS Network.
- 2.71 "Switched Exchange Access Service" means the offering of transmission or switching services to Telecommunications CLECs for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services. "Tax" or "Taxes" means any and all

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federal, state, or local sales, use, excise, gross receipts, transfer, transaction or similar taxes or tax-like fees of whatever nature and however designated, including any charges or other payments, contractual or otherwise, for the use of streets or rights-of-way, whether designated as franchise fees or otherwise, and further including any legally permissible surcharge of or with respect to any of the foregoing, which are imposed or sought to be imposed on or with respect to, or measured by the charges or payments for, any products or services purchased under this Agreement.

- 2.72 "Telecommunications" is as defined in the Act.
- 2.73 "Telecommunications Carrier" is as defined in the Act.
- 2.74 "Telecommunications Service" is as defined in the Act.
- 2.75 "Telephone Exchange Service" is as defined in the Act.
- 2.76 "Telephone Toll Service" is as defined in the Act.
- 2.77 "Third Party" is any Person other than a Party.
- 2.78 "Trunk" means a communication line between two switching systems.
- 2.79 "Trunk-Side" means the Central Office Switch connection that is capable of, and has been programmed to treat the circuit as connecting to another switching entity (for example another Central Office Switch). Trunk-Side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.
- 2.80 "Unpaid Charges" means any charges other than Disputed Amounts billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.

3.0 Interpretation, Construction and Severability

3.1 Definitions:

3.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

3.2 Headings Not Controlling:

3.2.1 The headings and numbering of Sections, Parts, Attachments, Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

3.2.2 This Agreement incorporates a number of Attachments which, together with their associated Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular Attachment, Exhibit, Schedule or Addenda may otherwise have.

3.3 Referenced Documents:

3.3.1 Any reference throughout this Agreement to an industry guideline, AT&T KENTUCKY's technical

guideline or referenced AT&T KENTUCKY 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 AT&T's CLEC Online website.

3.4 References:

3.4.1 References herein to Sections, Paragraphs, Attachments, Exhibits, Parts and Schedules shall be deemed to be references to Sections, Paragraphs, Attachments and Parts of, and Exhibits, Schedules to this Agreement, unless the context shall otherwise require.

3.5 Tariff References:

3.5.1 References to state tariffs throughout this Agreement shall be to the currently effective tariff for the state or jurisdiction in which the services were provisioned; provided however, where certain AT&T KENTUCKY 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 AT&T KENTUCKY provides such services as a result of detariffing or deregulation.

3.5.2 Wherever the term "customer" is used in connection with AT&T KENTUCKY's tariffs, the term "customer" means: (i) the ultimate consumer; or (ii) the End User of any tariffed service; or (iii) a carrier customer of AT&T KENTUCKY.

3.5.3 No reference to tariffs in this Agreement shall be interpreted or construed as requiring CLEC to purchase services under such tariff.

3.6 Conflict in Provisions:

3.6.1 If any definitions, terms or conditions in any given Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment, Exhibit, Schedule or Addenda. In particular, if an Attachment contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Attachment will control the length of time that services or activities are to occur under that Attachment, but will not affect the Term length of the remainder of this Agreement.

3.7 Joint Work Product:

3.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

3.7.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effectuate the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

3.8 Incorporation by Reference:

3.8.1 All of the rates, terms and conditions ("Provisions") set forth in this Agreement (including any and all Attachments, and/or Schedules hereto) and every service provided hereunder, are subject to all other Provisions contained in this Agreement and all such Provisions are integrally related.

3.9 Non-Voluntary Provisions:

3.9.1 This Agreement incorporates certain rates, terms and conditions that were not voluntarily negotiated and/or agreed to by AT&T KENTUCKY, but instead resulted from determinations made in arbitrations under Section 252 of the Act or from other requirements of regulatory agencies or state law (individually and collectively "Non-Voluntary Arrangement(s)"). If any Non-Voluntary Arrangement is modified as a result of any order or finding by the FCC, the appropriate Commission or a court of competent jurisdiction, the Parties agree to follow the Intervening Law process outlined in Section 19 below.

3.9.2 The Parties acknowledge that the Non-Voluntary Arrangements contained in this Agreement shall not be available in any state other than the state that originally imposed/required such Non-Voluntary Arrangement.

3.10 Scope of Obligations

3.10.1 The Parties acknowledge and agree that AT&T KENTUCKY is only obligated to make available Interconnection under Section 251(c)(2) to Competitive Local Exchange Carriers in AT&T KENTUCKY's incumbent local Exchange Areas. AT&T KENTUCKY has no obligation to provide such Interconnection to Competitive Local Exchange Carriers for the purposes of Competitive Local Exchange Carriers providing and/or extending service outside of AT&T KENTUCKY's incumbent local Exchange Areas. In addition, AT&T KENTUCKY is not obligated to provision Interconnection under Section 251(c)(2) and is not otherwise bound by any 251(c) obligations in geographic areas other than AT&T KENTUCKY's incumbent local Exchange Areas.

3.11 Affiliates:

3.11.1 This Agreement, including subsequent amendments, if any, shall bind AT&T KENTUCKY and CLEC and any other CLEC that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between AT&T KENTUCKY and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein, (subject to any early termination due to default), until either AT&T KENTUCKY or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective interconnection agreement between any such CLEC Affiliate and AT&T KENTUCKY until the expiration of such other agreement.

4.0 Notice of Changes

4.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise or to otherwise change and/or modify its network including, without limitation, through the retirement and/or replacement of equipment, software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

5.0 Responsibilities of the Parties

5.1 If applicable, each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T KENTUCKY's network as referenced in Telcordia Networks SR 2275 (formerly known as BOC Notes on LEC Networks Practice No. SR-TSV-002275), and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

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- 5.2 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.
- 5.3 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.

6.0 Assignment or Transfer of Agreement and Corporate Name Change

6.1 Assignment or Transfer of Agreement:

6.1.1 CLEC may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of AT&T KENTUCKY, which shall not be unduly delayed, withheld, or conditioned.

6.1.2 AT&T KENTUCKY. For any proposed assignment or transfer CLEC shall provide AT&T KENTUCKY with a minimum of one hundred twenty (120) calendar days advance written Notice of any assignment associated with a CLEC Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T KENTUCKY's written consent which shall not be unreasonably withheld. CLEC's written Notice shall include the anticipated effective date of the assignment or transfer. Any attempted assignment or transfer that is not permitted is void as to AT&T KENTUCKY and need not be recognized by AT&T KENTUCKY unless it consents or otherwise chooses to do so for a more limited purpose. CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment to AT&T KENTUCKY; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to an Affiliate if that Affiliate is a Party to a separate interconnection agreement with AT&T KENTUCKY under Sections 251 and 252 of the Act that covers the same state(s) as this Agreement. Any attempted assignment or transfer that is not permitted is void *ab initio*.

6.2 CLEC Name Change:

6.2.1 Any change in CLEC's corporate name including a change in the "d/b/a", or due to assignment or transfer of this Agreement wherein only the CLEC name is changing, and no CLEC Company Code(s) are changing, constitutes a CLEC Name Change. For any CLEC Name Change, CLEC is responsible for providing proof of compliance with designated industry administrators related to any Company Code(s).

6.2.2 The Parties agree to amend this Agreement to appropriately reflect any CLEC Name Change.

6.3 Company Code(s) Change:

6.3.1 Unless within sixty (60) days of acquisition, CLEC provides AT&T KENTUCKY with appropriate paperwork reflecting that Third Party-administered codes have been updated to reflect CLEC's name on each Company Code associated with acquired assets, CLEC must submit an order for each acquired asset to reflect the change of ownership in all appropriate AT&T KENTUCKY systems. All orders must be submitted no later than nine (9) months after the closing date of the acquisition. Nothing herein will require CLEC to access or utilize any AT&T KENTUCKY ordering systems that it would not otherwise be required to use.

6.3.2 In the event of a Company Code Change, CLEC shall comply with Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to End Users.

6.3.3 For any CLEC Company Code Change, CLEC must negotiate a separate transfer or assignment agreement.

6.3.4 CLEC acknowledges that failing to comply with this Section 6 shall entitle AT&T KENTUCKY to issue a

Notice under and in accordance with Section 7.3 of this Agreement.

- 6.4 Wherever required by this Section 6, AT&T KENTUCKY's consent shall be conditioned upon receipt of payment for all outstanding charges associated with any transferred or acquired assets.

7.0 Effective Date, Term and Termination

7.1 Effective Date:

- 7.1.1 In AT&T KENTUCKY, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.

7.2 Term:

- 7.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire five (5) years from the Effective Date (the "Term"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party by providing 180 days written notice of its intent to terminate or pursuant to this Section 7. If the Parties are in active, good faith negotiations or have filed for arbitration with the Commission after such negotiations have proven unsuccessful in resolving all of the issues the Parties shall continue to perform pursuant to the rates, terms and conditions set forth in this Agreement until a successor agreement becomes effective between the Parties.

7.3 Termination for Nonperformance or Breach:

- 7.3.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice thereof. If the nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party.

- 7.3.2 If, at any time during the term of this Agreement, AT&T KENTUCKY is unable to contact CLEC pursuant to the Notices provision hereof or any other contact information provided by CLEC under this Agreement, and no traffic has been exchanged between the Parties for 180 days pursuant to this Agreement, then AT&T KENTUCKY may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending written notification delivered by express delivery service or mailed via certified mail to CLEC pursuant to the Notices Section hereof.

7.4 Termination of Agreement after Initial Term expiration:

- 7.4.1 Where CLEC is no longer exchanging traffic with AT&T KENTUCKY under this Agreement, either Party may terminate the Agreement by providing "Notice of Termination" to the other Party at any time after the initial term of this Agreement. After termination, the Parties' liability for termination of this Agreement shall be limited to obligations under the Survival Section 35.

- 7.4.2 Either Party may reject a request under Section 252 to initiate negotiations for a new agreement if the other Party has an outstanding, undisputed balance under this Agreement.

8.0 End User Fraud

- 8.1 Neither Party shall be liable to the Other Party for any fraud associated with the Other Party's Customer or End User account, including 1+ IntraLATA toll, ported numbers, and ABT.

- 8.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABT, and ported numbers. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 8.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 8.2 above will include providing to the other Party, upon request, information concerning End Users who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 8.4 AT&T KENTUCKY will use a Fraud Monitoring System to determine suspected occurrences of ABT-related fraud and will provide notification messages to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB.
- 8.5 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.
- 8.6 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification.

9.0 Billing and Payment of Charges

- 9.1 Unless otherwise stated, each Party will render monthly bill(s), remittance in full by the Bill Due Date, to the other for services provided hereunder at the applicable rates set forth in the Pricing Sheet.
- 9.2 There will be no offset by the billed Party of payments due herein against any other amount owed by one Party to the other.
- 9.3 A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable.
- 9.3.1 If any portion of the payment is not received on or before the payment due date as set forth above, or if any portion of the payment is received in funds that are not immediately available, then a late payment and/or interest charge shall be due. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed at the lesser of 1 1/2% per month or the rate in the applicable AT&T KENTUCKY state tariff. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable AT&T KENTUCKY tariff.
- 9.4 If any charge incurred under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable AT&T KENTUCKY intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.
- 9.5 The Remittance Information to apply payments must accompany the payment. Payment is considered to have been made when the payment and Remittance Information are received by the Billing Party. If the Remittance Information is not received with payment, the Billing Party will be unable to apply amounts paid to CLEC's accounts. In such event, the Billing Party shall hold such funds until the Remittance Information is received. If the Billing Party does not receive the Remittance Information by the Bill due date for any account(s), Late Payment Charges shall apply.
- 9.6 All payments shall be made via electronic funds transfers (EFTs) through the Automated Clearing House Association (ACH) to the financial institution designated by the receiving Party. Remittance Information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX Standard Entry Class code CLEC and AT&T KENTUCKY will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH payment must be received no later than the Bill Due Date of each bill or Late Payment Charges will apply. Each Party is responsible for its own banking fees.
- 9.7 Prior to establishing EFT, CLEC will complete a Customer Information Form for Electronic Payments (ECF11 Form)

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found on AT&T's CLEC Online website. This form provides AT&T KENTUCKY with CLEC's set up and contract information for electronic payments. AT&T KENTUCKY banking information will be provided by AT&T KENTUCKY Treasury & Remittance Operations on AT&T KENTUCKY approved forms after the CLEC's completed ECF11 form is received, testing has completed and certification confirmed.

- 9.8 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. Each Party is responsible for any Late Payment Charges resulting from their failure to use electronic funds credit transfers through the ACH network.
- 9.9 If Unpaid Charges are subject to a billing dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4 below. The Disputing Party should utilize the preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay all undisputed amounts to the Billing Party.
- 9.10 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10 below.
- 9.11 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that the following actions are completed:
- 9.11.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto, no later than the second Bill Due Date after resolution of the dispute; and
- 9.11.2 within ten (10) Business Days after resolution of the dispute, the Non-Paying Party will pay the portion of the Disputed Amounts resolved in favor of the Billing Party, together with any Late Payment Charges assessed thereon.
- 9.12 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Non-Paying Party shall pay the entire Disputed Amount, including any Late Payment Charges, within ten (10) Business Days.
- 9.13 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 9.11 or Section 9.12 above, as applicable, shall be grounds for termination of the services provided under this Agreement.
- 9.14 Each Party will notify the Other Party at least ninety (90) calendar days or three (3) monthly billing cycles prior to any billing changes. At that time a sample of the new invoice will be provided so that the Other Party has time to program for any changes that may impact validation and payment of the invoices. If notification is not received in the specified time frame, then invoices will be held and not subject to any Late Payment Charges, until the appropriate amount of time has passed to allow the Other Party the opportunity to test the new format and make changes deemed necessary.
- 9.15 If either Party requests one (1) or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy as specified in the Pricing Sheet, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
- 9.16 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete both of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.16.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 10.4 below of this Agreement, together with the reasons for its dispute; and
- 9.16.2 pay all undisputed Unpaid Charges to the Billing Party.
- 9.17 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10 below.

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9.18 Limitation on Back-billing and Credit Claims; Exceptions to Limitation for Certain Situations (True-Ups):

9.18.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to:

9.18.1.1 Back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve (12) month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement. Nothing herein shall prohibit either Party from rendering bills or collecting for any service(s) more than twelve (12) months after the service(s) was provided when the ability or right to charge or the proper charge for the service(s) was the subject of an arbitration or other Commission docket or any FCC order, including any appeal of such arbitration, docket or FCC order to which both Parties were party. In such cases (hereinafter a "true-up"), the time period for billing shall be the longer of (a) the period specified by the commission in the final order allowing or approving such charge or (b) eighteen (18) months from the date of the final order allowing or approving such charge or (c) twelve (12) months from the date of approval of any executed amendment to this Agreement required to implement such charge.

9.18.1.2 Back-billing and credit claims, and true-ups, as limited above, will apply to all services purchased under this Agreement.

9.18.1.3 ***Notwithstanding anything in this Agreement to the contrary, each party agrees to pay the other party for all services rendered prior to the Effective Date of this Agreement at the rates specified herein within thirty (30) days of the Commission's approval of the terms, conditions, and rates of this Agreement and that no limitation and/or term or condition of this Agreement shall limit or prevent the party from receiving full compensation for these interim services provided before the Effective Date of this Agreement.***

10.0 Dispute Resolution

10.1 Finality of Disputes:

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twelve (12) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

10.2 Alternative to Litigation:

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

10.3 Commencing Dispute Resolution:

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written Notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written Notice has first been given to the other Party. There are two (2) separate Dispute Resolution

methods:

- 10.3.1.1 Informal Dispute Resolution; and
- 10.3.1.2 Formal Dispute Resolution, each of which is described below.

10.4 The following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written Notice sent to AT&T KENTUCKY for Disputed Amounts must be made on the "Billing Claims Dispute Form".

10.4.1 If the written Notice given pursuant to Section 10.3 above discloses that the dispute relates to billing, then the procedures set forth in Section 9.16 above shall be used.

10.4.2 For a dispute submitted by the CLEC, the dispute shall first be processed by the appropriate service center for resolution.

10.4.3 In order to resolve a billing dispute, the Disputing Party shall furnish the other Party written Notice of:

- 10.4.3.1 the date of the bill in question;
- 10.4.3.2 the account number or other identification of the bill in question;
- 10.4.3.3 amount billed;
- 10.4.3.4 amount in question; and
- 10.4.3.5 the reason that the Disputing Party disputes the billed amount.

10.4.4 The Parties shall attempt to resolve Disputed Amounts appearing on current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the Disputing Party furnishes all requisite information and evidence under Section 10.4 above by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, the non-Disputing Party will notify the Disputing Party of the status of the dispute and the expected resolution date.

10.4.5 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date Notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 10.4 above), upon request, the non-Disputing Party will notify the Disputing Party of the status of the dispute and the expected resolution date.

10.4.6 If the Disputing Party is not satisfied by the resolution of the billing dispute under this Section 10.4 above, the Disputing Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 below of this Agreement.

10.5 Informal Dispute Resolution:

10.5.1 Upon receipt by one Party of Notice of a dispute by the other Party pursuant to Section 10.3 above or Section 10.4 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

10.6 Formal Dispute Resolution:

10.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.5

above, then either Party may invoke the formal Dispute Resolution procedures described in this Section 10.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.5 above.

10.6.2 Claims Subject to Elective Arbitration:

10.6.2.1 Claims will be subject to elective arbitration pursuant to Section 10.7 below, if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

10.6.3 Claims Not Subject to Arbitration:

10.6.3.1 If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism:

10.6.3.1.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

10.6.3.1.2 All claims arising under federal or state statute(s), including antitrust claims.

10.7 Arbitration:

10.7.1 Disputes subject to elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in Louisville, Kentucky, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section 10 may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

10.8 Compliance with Dispute Resolution Process

10.8.1 The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the Commission in the state where the services in dispute are provided. However, each Party reserves any rights it may have to seek review of any ruling made by the Commission concerning this Agreement by a court of competent jurisdiction.

11.0 Audits

11.1 Subject to the restrictions set forth in Section 18 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the Service Start Date for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii)

Bold/Underline=AT&T proposed language that DUO disagrees with

Bold/Italic=DUO proposed language that AT&T disagrees with

verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

- 11.2 The Parties also must mutually agree on a written scope of the audit and the billing and invoices to be audited prior to the initiation of the audit.
- 11.3 The audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the Service Start Date.
- 11.4 Such audit shall be conducted by an independent auditor acceptable to both Parties. Auditing Party shall insure that the independent auditor executes a nondisclosure agreement in a form agreed upon by the Parties prior to engaging in any audit work.
- 11.5 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Except where to do so would defeat the purpose of the audit, the Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of End Users of Audited Party.
- 11.6 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 11.7 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 9.3 above for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.
- 11.8 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 11.9 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1 above. Any additional audit shall be at the requesting Party's expense.

12.0 Disclaimer of Representations and Warranties

- 12.1 **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.

13.0 Limitation of Liability

- 13.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any Loss relating to or arising out of any cause whatsoever, including any negligent act or omission (whether willful or inadvertent) whether based in contract, tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the facilities, products, services or functions not performed or provided or improperly performed or provided.
- 13.2 Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 13.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 13.
- 13.4 Neither CLEC nor AT&T KENTUCKY shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 13 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 13.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 13.5 AT&T KENTUCKY shall not be liable for damages to an End User's premises resulting from the furnishing of any services, including, if applicable, the installation and removal of equipment and associated wiring, and Collocation Equipment unless the damage is caused by AT&T KENTUCKY's gross negligence or willful misconduct. AT&T KENTUCKY does not guarantee or make any warranty with respect to services when used in an explosive atmosphere.
- 13.6 AT&T KENTUCKY shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 13.7 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, functions, facilities, products and services available hereunder,

and no different pricing reflecting different costs and different limits of liability was agreed to.

14.0 Indemnity

- 14.1 Except as otherwise expressly provided herein or in specific Attachments, each Party shall be responsible only for the services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the services, provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 14.2 Except as otherwise expressly provided herein or in specific Attachments, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 14.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by its End User regardless of whether the underlying service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 14.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any Claim or Loss arising from the Indemnifying Party's use of services provided under this Agreement involving:
- 14.4.1 Any Claim or Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.
 - 14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any services provided pursuant to this Agreement.
 - 14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of services, provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:
 - 14.4.1.2.1 where an Indemnified Party or its End User modifies services, provided under this Agreement; and
 - 14.4.1.2.2 no infringement would have occurred without such modification.
 - 14.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

- 14.5 The Parties acknowledge that their right under this Agreement to interconnect with the other Party's network may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.
- 14.6 Neither Party shall have an obligation to attempt to obtain for the other Party any Intellectual Property right(s) that would permit said other Party to use any network element in a different manner than used by the Party whose network element is being used.
- 14.7 To the extent not prohibited by a contract containing Intellectual Property licenses with the vendor of the network element sought by a Party, the Party whose network element is being requested shall reveal to the requesting Party the name of the vendor, the Intellectual Property rights licensed under the vendor contract and the terms of the contract (excluding cost terms). The Party whose network element is being requested shall, at the requesting Party's request, contact the vendor to attempt to obtain permission to reveal additional contract details to the requesting Party.
- 14.8 All costs associated with the extension of Intellectual Property rights to the requesting Party pursuant to Section 15 below, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the service to which the Intellectual Property rights relate and apportioned to all parties using that service.
- 14.9 Neither Party hereby conveys any licenses to use such Intellectual Property rights or makes any warranties, express or implied, concerning the other Party's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights (including whether such rights will be violated by such interconnection and/or combining with the other Party's network elements), in their networks or the other Party's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with services offered under this Agreement are subject to the ownership terms stated in Section 15 of this Agreement.
- 14.10 Neither Party shall indemnify, defend or hold the other Party harmless, nor be responsible for indemnifying or defending, or holding the other Party harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to the other Party's interconnection with a Party's network and/or combining each others network elements, or the other Party's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with services offered under this Agreement shall be vendor's indemnities and are subject to the ownership terms stated in Section 15 of this Agreement.
- 14.11 Each Party shall reimburse the other Party for damages to the other Party's facilities utilized to provide services hereunder caused by the negligence or willful act of the reimbursing Party, its agents or subcontractors or its End User(s) or resulting from the reimbursing Party's improper use of the other Party's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than the other Party. Upon reimbursement for damages, the reimbursed Party will cooperate with the other Party in prosecuting a claim against the person causing such damage. The reimbursing Party shall be subrogated to the right of recovery by the reimbursed Party for the damages to the extent of such payment.
- 14.12 Indemnification Procedures:
- 14.12.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 14.12.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 14.12.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject

to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

- 14.12.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 14.12.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 14.12.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 14.12.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 14.12.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 14.12.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 18 below.

15.0 Intellectual Property/License

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

16.0 Notices

- 16.1 Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be pursuant to at least one of the following methods:
- 16.1.1 *delivered personally, delivered by express delivery service or mailed via certified mail or first class U.S. Postal Service, with postage prepaid and a return receipt requested.*
- 16.1.2 delivered by facsimile provided CLEC and/or AT&T KENTUCKY has provided such information in Section

16.3 below.

16.1.3 delivered by electronic mail (email) provided CLEC and/or AT&T KENTUCKY has provided such information in Section 16.3 below.

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

16.2.1 the date of actual receipt;

16.2.2 the next Business Day when sent via express delivery service;

16.2.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or

16.2.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

16.2.5 notice by email shall be effective on the date it is officially recorded as delivered by delivery receipt and in the absence of such record of delivery, it shall be presumed to have been delivered on the date sent..

16.3 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	Daryl L. Hammond Vice President / Chief Financial Officer
STREET ADDRESS	2150 North Main Street
CITY, STATE, ZIP CODE	Jamestown, KY 42629
PHONE NUMBER*	(270) 343-1111
FACSIMILE NUMBER	(270) 343-6500
EMAIL ADDRESS	dhammond@duotel.com

	AT&T CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard St., 9 th floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Dallas, TX 75202-5398
FACSIMILE NUMBER	(214) 464-2006
EMAIL ADDRESS	The current email address as provided on AT&T's CLEC Online website

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

16.5 Either Party may unilaterally change its designated contact name, address, email address, and/or facsimile number for the receipt of Notices by giving written Notice to the other Party in compliance with this Section 16. Unless explicitly stated otherwise, any change to the designated contact name, address, email address, and/or facsimile number will replace such information currently on file. Any Notice to change the designated contact name, address, email address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

16.6 AT&T KENTUCKY communicates official information to CLECs via its Accessible Letter, or other applicable, notification processes. These processes involve electronic transmission and/or posting to the AT&T CLEC Online website, inclusive of a variety of subjects including declaration of a force majeure, changes on business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.

Bold/Underline=AT&T proposed language that DUO disagrees with

Bold/Italic=DUO proposed language that AT&T disagrees with

17.0 Publicity and Use of Trademarks or Service Marks

- 17.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly.
- 17.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

18.0 Confidentiality

- 18.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 18.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 18.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
 - 18.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
 - 18.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
 - 18.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 18.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
 - 18.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
 - 18.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

19.0 Intervening Law

- 19.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement (e.g. *In the Matter of Connect America Fund, a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange CLECs, High-cost Universal Service Support, Developing a Unified InterCLEC Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT No 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011 and subsequent authority) or which may be the subject of further review. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were

the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of the Parties that are addressed by this Agreement, the Affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party in accordance with Section 16 above ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

20.0 Regulatory Approval

20.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

21.0 Governing Law

21.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles.

22.0 Jurisdiction and Venue

22.1 The Parties submit to personal jurisdiction (as appropriate) in Louisville, Kentucky or (solely for matters subject to the subject-matter jurisdiction of the Kentucky Public Service Commission or the Franklin Circuit Court on appeal from the Kentucky Public Service Commission) Frankfort, Kentucky and waive any and all objection to any such venue. Proper venue shall be in the city located in the state whose laws apply to the dispute.

23.0 Compliance and Certification

- 23.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 23.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 23.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other CLECs, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 23.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.
- 23.5 CLEC shall provide AT&T KENTUCKY with CLEC's complete and valid OCNs/AECNs as assigned by NECA and ACNA as assigned by Telcordia ("Profile Codes"), for each state to which this Agreement applies. For renegotiated agreements, CLEC shall also provide a list of all OCNs/AECNs and ACNAs associated with products and services purchased prior to the Effective Date of this Agreement. If CLEC orders a product or service under this agreement then, the CLEC shall provide the Profile Codes via the appropriate OSS, (e.g., CLEC Profile) within thirty (30) calendar days of this Agreement being approved by the applicable Commission. CLEC shall not order products or services under this Agreement until it has provided its Profile Codes as set forth in this Section.

24.0 Law Enforcement

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24.1 AT&T KENTUCKY and CLEC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

24.1.1 Intercept Devices:

24.1.1.1 Local and federal law enforcement agencies periodically request information or assistance ("Requesting Authority") from a Telecommunications CLEC. When either Party receives a request ("Receiving Party") associated with an End User of the other Party and the Receiving Party does not provide the network end-office/loop switching functionality to such End User, the Receiving Party will promptly notify the Requesting Authority so that the Requesting Authority may redirect its request to the appropriate Party that provides such functionality. Notwithstanding the foregoing, a Receiving Party shall comply with any valid request of a Requesting Authority to attach a pen register, trap-and-trace or form of intercept on the Receiving Party's Facilities.

24.1.2 Subpoenas:

24.1.2.1 If a Receiving Party receives a subpoena (or equivalent legal demand regardless of nomenclature, e.g., warrant) for information concerning an End User the Receiving Party knows to be an End User of the other Party and for whom the Receiving Party has no responsive information, the Receiving Party shall promptly notify the person or entity that caused issuance of such subpoena so that it may redirect its subpoena to the other Party.

24.1.3 Emergencies:

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

24.2 Each of the Parties agree to comply with the applicable state and federal law enforcement authorities, laws, and requirements, including but not limited to, the Communications Assistance for Law Enforcement Act (CALEA) and to report to applicable State and Federal law enforcement authorities as required by law.

25.0 Relationship of the Parties / Independent Contractor

25.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

25.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to

assume any responsibility for the management of the other Party's business.

26.0 No Third Party Beneficiaries; Disclaimer of Agency

26.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a Party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

27.0 Subcontracting

27.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.

27.2 Each Party will be solely responsible for payments due that Party's subcontractors.

27.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

27.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

27.5 Any subcontractor that gains access to Customer Proprietary Network Information (CPNI) or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

28.0 Responsibility for Environmental Contamination

28.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law. "Hazardous Substances" means (i) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, (ii) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or (iii) asbestos and asbestos containing material in any form, and (iv) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above. "Environmental Hazard" means (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, (ii) asbestos containing materials, or (iii) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.

28.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, AT&T KENTUCKY shall, at CLEC's request, indemnify, defend, and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by AT&T KENTUCKY or any person acting on behalf of AT&T KENTUCKY, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by AT&T KENTUCKY or any person acting on behalf of AT&T KENTUCKY, or (iii) the presence at the work location of an Environmental Hazard for which AT&T KENTUCKY is responsible under Applicable Law or a Hazardous Substance introduced into the work location by AT&T KENTUCKY or any person acting on behalf of AT&T KENTUCKY.

28.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law,

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Bold/Italic=DUO proposed language that AT&T disagrees with

CLEC shall, at AT&T KENTUCKY's request, indemnify, defend, and hold harmless AT&T KENTUCKY, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by CLEC or any person acting on behalf of CLEC, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by CLEC or any person acting on behalf of CLEC, or (iii) the presence at the work location of an Environmental Hazard for which CLEC is responsible under Applicable Law or a Hazardous Substance introduced into the work location by CLEC or any person acting on behalf of CLEC.

29.0 Force Majeure

29.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make monetary payments) resulting from a "Force Majeure Event" or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. A "Force Majeure Event" is defined as acts or occurrences beyond the reasonable control of a Party or the Parties, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, labor difficulties, including without limitation, strikes, slowdowns, picketing, boycotts or other work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation CLECs, individually and collectively a Force Majeure Event. If a Force Majeure Event shall occur, the Party affected shall give notice to the other Party of such Force Majeure Event within a reasonable period of time following such an event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like Notice and proceed to perform with dispatch once the causes are removed or cease.

30.0 Taxes

30.1 Except as otherwise provided in this Section 30, with respect to any purchase of products or services under this Agreement, if any Tax is required or permitted by Applicable Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority. Whenever possible, Taxes shall be billed as a separate item on the invoice; provided, however, that failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 30 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority within the applicable statute of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for including extensions, or (ii) six (6) years

following the purchasing Party's payment for the products or services to which such Tax relates.

- 30.2 With respect to any purchase under this Agreement of products or services that are resold by the purchasing Party to a Third Party or used as a component part of or integrated into a product or service sold to a Third Party, if any Tax is imposed on or with respect to such sale by the purchasing Party, the purchasing Party shall pay or remit such Tax to the respective Governmental Authority. If the purchasing Party fails to pay or remit any Tax as required by Applicable Law, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such Tax and any interest and penalties thereon. Notwithstanding any other provision of this Agreement, the purchasing Party agrees to protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any Tax, any interest or penalties thereon, and any costs or expenses (including attorney fees) incurred by the providing Party as a result of any claim asserted or actions taken by the respective Governmental Authority to assess against or collect from the providing Party any Tax related to any sale by the purchasing Party to a third Party.
- 30.3 To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 30 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to payment, then the providing Party may in its discretion agree not to bill and/or not to require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party.
- 30.4 To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 30, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 30 not to bill and/or not to require payment of such Tax by the purchasing Party pending the outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 30, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in

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a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts.

- 30.5 If either Party is audited by or on behalf of a Governmental Authority with respect to a Tax, and in any contest of a Tax by either Party, the other Party shall cooperate fully and timely by providing records, testimony and such additional information or assistance as may reasonably be necessary to expeditiously resolve the audit or pursue the contest.
- 30.6 All Notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 30 shall be sent in accordance with Section 16 above hereof.

31.0 Non Waiver

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

32.0 Network Maintenance and Management

- 32.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, escalation processes, etc.) to achieve this desired result.
- 32.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a twenty four (24)-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 32.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or seven (7)-digit and ten (10)-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 32.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal Trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 32.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.
- 32.6 Neither Party shall use any service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of AT&T KENTUCKY, its affiliated companies or other connecting telecommunications CLECs, prevents any CLEC from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other CLECs or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting CLEC's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is

violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

33.0 Expenses

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

34.0 Conflict of Interest

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

35.0 Survival

- 35.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 7.4 above on Termination; Section 9.1 thru Section 9.7 above and Section 9.16 thru Section 9.18, above on Billing & Payment of Charges; Section 11 above on Audits, Section 12 above on Warranties, Section 14 above Indemnity; Section 15 above Intellectual Property/License; Section 16 above Notices; Section 17 above Publicity and Use of Trademarks or Service Marks; Section 18 above Confidentiality; Section 21 above Governing Law; Section 22 above Jurisdiction and Venue; CALEA Compliance; Section 30 above Taxes; Section 31 above Non Waivers and Section 37 below Amendments and Modifications.

36.0 Scope of Agreement

- 36.1 This Agreement is intended to describe and enable specific compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other services provided for in this Agreement.
- 36.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

37.0 Amendments and Modifications

- 37.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.

38.0 Authority

- 38.1 Each of the AT&T owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its State of incorporation or formation. Each of the AT&T owned ILEC(s) for which this Agreement is executed represents and warrants that AT&T Services, Inc. has full power and authority to execute and deliver this Agreement as agent for that AT&T owned ILEC. Each of the AT&T owned ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.
- 38.2 CLEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the

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Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such service.

- 38.3 Each Person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

39.0 Counterparts

- 39.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

40.0 Entire Agreement

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

Cumberland Cellular, Inc. d/b/a Duo County Telephone

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky by
AT&T Services, Inc., its authorized agent

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____

Date: _____

State	CLEC OCN
KENTUCKY	330E

Description	ACNA Code(s)
ACNA(s)	UUD

ATTACHMENT 01-

NON-COMPETING CLEC [TOLL] [*ACCESS*] ONLY

TRAFFIC

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1.0 Introduction

- 1.1 This Attachment is only applicable in scenarios in which CLEC is not competing with AT&T KENTUCKY in AT&T KENTUCKY's territory as a CLEC. This Attachment sets forth terms and conditions for Inter-carrier Compensation for AT&T KENTUCKY and CLEC.
- 1.2 The Inter-carrier Compensation provisions of this Attachment apply to Telecommunications intraLATA Toll Traffic originated and terminated between the Parties over each Party's own facilities. This traffic will either (a) originate from CLEC's End User located in another ILEC's incumbent local Exchange Area and terminate to an AT&T KENTUCKY End User, or (b) **[be delivered by AT&T for termination]** **[originate from an AT&T End User and terminate]** to CLEC's End User located in another ILEC's incumbent Local Exchange Area.
- 1.3 This Attachment also describes inter-carrier compensation arrangement for IXC traffic that originates from CLEC's End User for handoff to an IXC directly connected to AT&T KENTUCKY's access tandem and/or IXC traffic that is handed to AT&T KENTUCKY's access tandem for termination to CLEC's End User.

2.0 Definitions

- 2.1 "Access Usage Record (AUR)" is a message Record which contains the usage measurement reflecting the service feature group, duration and time of day for a message and is subsequently used to bill access to IXCs.
- 2.2 "Assembly and Editing" means the aggregation of recorded customer message details to create individual message Records and the verification that all necessary information required ensuring all individual message Records meet industry specifications is present.
- 2.3 "Billable Message" is a message Record containing details of a completed transported call which is used to bill an End User. "Data Transmission" is the forwarding of Billable Message detail and/or AUR detail in Exchange Message Interface ("EMI") format over a mutually agreed upon medium to the appropriate Billing Company.
- 2.4 "Interexchange Carrier (IXC) Transported" means Telecommunications Services provided by an IXC or traffic transported by facilities belonging to an IXC.
- 2.5 "Message Processing" is the creation of individual EMI formatted Billable Message detail Records from individual Recordings that reflect specific billing detail for use in billing the End User and/or AURs from individual Recordings that reflect the service feature group, duration and time of day for a message, Carrier Identification Code, among other fields, for use in billing access to the IXCs. Message Processing includes performing CMDS online edits required to ensure message detail and AURs are consistent with CMDS specifications.
- 2.6 "Non-Competing CLEC" is a CLEC providing telecommunications services in one or more local exchange areas served by one or more non-AT&T ILECs.
- 2.7 "Provision of Message Detail" is the sorting of all Billable Message detail and AUR detail by Revenue Accounting Office, Operating Company Number or Service Bureau, splitting of data into packs for invoicing

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and loading of data into files for Data Transmission to CLEC for those Records created internally or received from other Local Exchange Carrier Companies or IXCs through AT&T KENTUCKY's internal network or national CMDS.

- 2.8 "Record" means the logical grouping of information as described in the programs that process information and create the data files.
- 2.9 "Recording" is the creation and storage on a mutually agreed upon medium of the basic billing details of a message in AMA format converted to EMI layout.
- 2.10 "Recording Company" is the company that performs the functions of Recording and Message Processing of IXC Transported messages and the Provision of Message Detail.

3.0 Network

- 3.1 The Parties agree to negotiate a CLEC Interconnection Agreement ("ICA") prior to the exchange of local, Extended Area Service ("EAS") and/or any other traffic not addressed in this Attachment. The specific facility arrangements required to interconnect the Parties' network shall be negotiated by the Parties.
- 3.2 If CLEC chooses AT&T KENTUCKY to perform the Service Switching Point (SSP) Function (i.e., handle Toll Free database queries) from AT&T KENTUCKY's switches, all CLEC originating Toll Free ("8YY") traffic between CLEC and AT&T KENTUCKY shall be delivered using GR-394 format. Carrier Code "0110" and Circuit Code (to be determined for each LATA) shall be used for all such calls.
- 3.3 CLEC may choose to perform its own Toll Free database queries from its switch. In such cases, CLEC will determine the nature of the Toll Free call (local/IntraLATA/InterLATA) based on the response from the database. If the call is an AT&T KENTUCKY intraLATA Toll Free call, CLEC will route the post-query IntraLATA converted ten-digit local number to AT&T KENTUCKY and CLEC shall provide to AT&T KENTUCKY a Toll Free billing record. If the query reveals the call is an IXC Toll Free call, CLEC may route the post-query interLATA Toll Free call (1) directly from its switch for carriers interconnected with its network or (2) to AT&T KENTUCKY for carriers that are not directly connected to CLEC's network but that are connected to AT&T KENTUCKY's access tandem.
- 3.4 All post-query Toll Free calls for which CLEC performs the SSP function, if delivered to AT&T KENTUCKY, shall be delivered using GR-394 format for calls destined to IXCs, and GR-317 format for calls destined to End Offices that directly subtend an AT&T KENTUCKY access tandem within the LATA.

4.0 Compensation

- 4.1 Calling Party Number (CPN) Responsibilities:
- 4.1.1 For all traffic originated on a Party's network including, without limitation, Switched Access Traffic, such Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c). CPN shall, at a minimum, include information in an industry recognized standard format, consistent with the requirements of the NANP containing an NPA and seven digit (NXX-XXXX) telephone number. Each Party to this Agreement will be responsible for passing on any CPN it receives from a Third Party for traffic delivered to the other Party. In addition, each Party agrees that it shall not strip, alter, modify, add,

delete, change or incorrectly assign any CPN. If either Party identifies improper, incorrect, or fraudulent use of local Exchange Services (including, but not limited to PRI, ISDN and/or Smart Trunks), or identifies stripped, altered, modified, added, deleted, changed and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action.

- 4.1.2 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.

4.2 [Internationally Left Blank] [Primary Toll Carrier Arrangements:]

4.2.1 A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Traffic service for its own End Users and potentially for a Third Party ILEC's End Users. In this ILEC arrangement, AT&T KENTUCKY, as the PTC receives the Third Party ILEC's End User IntraLATA Toll Traffic revenues and pays the Third Party ILEC for originating these toll calls. AT&T KENTUCKY also pays the terminating switched access charges on behalf of the Third Party ILEC. In AT&T KENTUCKY, wherein Primary Toll Carrier arrangements are mandated and AT&T KENTUCKY is functioning as the PTC for a Third Party ILEC's End Users, the following provisions apply to the IntraLATA Toll Traffic that is subject to the PTC arrangement:

4.2.1.1 AT&T KENTUCKY shall deliver such IntraLATA Toll Traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T KENTUCKY is functioning as the PTC for a Third Party ILEC's End Users, the following provisions apply to the minutes of use terminating to CLEC. AT&T KENTUCKY and CLEC will work cooperatively to develop a percentage of the amount of state specific PTC ILEC originated intraLATA toll minutes of use that are within the state specific total ILEC originated minutes of use reflected in the monthly EMI 11-01-01 Records provided to CLEC by AT&T KENTUCKY. CLEC will apply this state specific percentage against the state specific percentage against the state specific total ILEC originated EMI 11-01-01 minutes of use each month to determine the amount of PTC intraLATA toll minutes of use for which AT&T KENTUCKY will compensate CLEC. Such percentage will be updated no more than twice each year. AT&T KENTUCKY will compensate CLEC for this PTC traffic as it would for AT&T KENTUCKY originated traffic.

4.2.1.2 AT&T KENTUCKY shall deliver such IntraLATA toll traffic that originated from CLEC and terminated to the Third Party ILEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. CLEC shall pay AT&T KENTUCKY for the use of its facilities at the rates set forth in AT&T KENTUCKY's intrastate access service tariff in the respective state. CLEC shall pay the ILEC directly for the termination of such traffic originated from CLEC.

4.3 IntraLATA 800/8YY Traffic:

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- 4.3.1 The Parties shall provide to each other IntraLATA 800/8YY Access Detail Usage Data for Customer billing and IntraLATA 800/8YY Copy Detail Usage Data for access billing in EMI format. On a monthly basis, at a minimum, the Parties agree to provide this data to each other at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable Record to the terminating Party, the originating Party will not bill the terminating Party any interconnection charges for this traffic.
- 4.3.2 IntraLATA 800/8YY Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800/8YY query. Each Party shall pay the other the appropriate switched access charges set forth in the AT&T KENTUCKY intrastate or interstate switched access tariffs. CLEC will pay AT&T KENTUCKY the database query charge as set forth in the AT&T KENTUCKY intrastate or interstate access services tariff as filed and in effect with the FCC or appropriate Commission as applicable. Where technically feasible, each Party will provide to the other Party the appropriate Records, in accordance with industry standards, necessary for billing intraLATA 800/8YY customers. The Records provided will be in a standard EMI format. AT&T KENTUCKY's provision of 800/8YY Toll Free Dialing (TFD) to CLEC requires interconnection from CLEC to AT&T KENTUCKY's 800/8YY Signal Channel Point (SCP). Such interconnections shall be established pursuant to AT&T KENTUCKY's Common Channel Signaling Interconnection Guidelines and Telcordia's CCS Network Interface Specification document, TR-TSV-000905. CLEC shall establish SS7 interconnection at the AT&T KENTUCKY Local Signal Transfer Points serving the AT&T KENTUCKY 800/8YY SCPs that CLEC desires to query. The terms and conditions for 800/8YY TFD are set out in AT&T KENTUCKY's intrastate access tariff.
- 4.4 **Meet Point Billing (MPB) and IXC Switched Access Traffic Compensation:**
- 4.4.1 **[CLEC shall bill AT&T Kentucky pursuant to its applicable tariff.] [Intercarrier compensation for IXC Switched Access Traffic shall be on a MPB basis as described below.]**
- 4.4.2 **The Parties will establish MPB arrangements in order to jointly provide Switched Access Services via the respective carrier's Tandem Office Switch in accordance with the MPB guidelines contained in the ATIS Ordering and Billing Forum's (OBF) Multiple Exchange Carriers Ordering and Design (MECOD) and Multiple Exchange Carrier Access Billing (MECAB) documents, as amended from time to time.**
- 4.4.3 **Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the Multiple Bill/Single Tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The Residual Interconnection Charge (RIC), if any, will be billed by the Party providing the End Office function.**
- 4.4.4 **The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.**

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- 4.4.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the MPB arrangement, when the Parties do not have all detailed Recordings for billing.
- 4.4.5.1 The Parties also agree that AT&T KENTUCKY and CLEC will exchange EMI Records when each is acting as the Official Recording Company. As described in the MECAB document, the Official Recording Company for Tandem routed traffic is: (1) the End Office company for originating traffic, (2) the Tandem company for terminating traffic and (3) the SSP company for originating 800 traffic.
- 4.4.6 Information shall be passed or exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI Records cannot be transferred due to a transmission failure, Records can be provided via a mutually acceptable medium. The provision of AURs to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.
- 4.4.7 MPB shall also apply to all jointly provided Switched Access minutes of use (MOU) traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs).
- 4.4.7.1 CLEC will pay the database query charge set forth in the AT&T KENTUCKY intrastate or interstate access services tariff.
- 4.4.8 AT&T KENTUCKY and CLEC agree to provide the other Party with notification of any discovered errors in the record exchange process within ten (10) Business Days of the discovery.
- 4.4.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) calendar days of notification, and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no less than three (3) and no more than twelve (12) consecutive months of prior usage data.
- 4.5 [Intentionally Left Blank] [IntraLATA Toll Traffic Compensation:]
- 4.5.1 For intrastate IntraLATA Message Telephone Service (MTS) Toll Traffic, compensation for termination of such traffic will be at terminating access rates. For intrastate IntraLATA 8YY service, compensation for termination of such traffic will be at originating access rates, including the Carrier Common Line (CCL) charge where applicable. The appropriate access rates are set forth in each Party's intrastate access service tariff, but such compensation shall not exceed the compensation contained in AT&T KENTUCKY's intrastate tariff.
- 4.5.2 For interstate IntraLATA MTS Toll Traffic, if any, compensation for termination of such traffic will be at terminating access rates. For interstate IntraLATA 8YY service, compensation for termination of such traffic will be originating access rates, including the CCL charge where applicable. The appropriate access rates are set forth in each Party's

interstate access tariff, but such compensation shall not exceed the compensation contained in the AT&T KENTUCKY's interstate tariff.

4.5.3 The parties agree to compensate each other for ISP Bound Traffic on a minute of use basis at \$.0007 per minute of use. In the event of a dispute the parties will work collaboratively to identify any ISP Bound Traffic.

4.5.4 CLEC has the sole obligation to enter into compensation arrangements with all Third Parties with whom CLEC exchanges traffic, including without limitation anywhere CLEC originates traffic to or terminates traffic from an End User being served by a Third Party who has purchased a local switching product from AT&T KENTUCKY on a wholesale basis (non-resale) that is used by such Third Party to provide wireline local telephone Exchange Service (dial tone) to its End Users. In no event will AT&T KENTUCKY have any liability, financial or otherwise to CLEC or any Third Party for traffic that an AT&T KENTUCKY End User (or an End User of a reseller of AT&T KENTUCKY's local exchange service, or an End User placing an IntraLATA Toll call pursuant to the AT&T KENTUCKY PTC arrangement described in Section 4.2 above) did not originate.

4.5.5 In the event that traffic is exchanged with a Third Party with which CLEC does not have a traffic compensation agreement, CLEC will indemnify, defend and hold harmless AT&T KENTUCKY against any and all losses including without limitation, charges levied by such Third Party. The Third Party and CLEC will bill their respective charges directly to each other. AT&T KENTUCKY will not be required to function as a billing intermediary (e.g. clearinghouse). AT&T KENTUCKY may provide information regarding such traffic to Third Party carriers or entities as appropriate to resolve traffic compensation issues.

4.5.6 To the extent that the Parties are not currently exchanging traffic in a given LATA or local calling area, the Parties' obligation to pay intercarrier compensation to each other shall commence on the date the Parties agree that the interconnection is complete (e.g., each Party has established its originating Trunks) and is capable of fully supporting originating and terminating End User traffic. In addition, the Parties agree that test traffic is not subject to compensation pursuant to this Attachment.

4.5.7 The Parties acknowledge that Section 4.5 above addresses the method of compensation for traffic properly exchanged by the Parties under this Agreement.

4.6 Billing Arrangements for Termination of IntraLATA Toll Traffic:

4.6.1 Each Party, unless otherwise agreed to by the Parties, will calculate terminating interconnection minutes of use based on standard switch Recordings made within terminating carrier's network for IntraLATA Toll Traffic. These Recordings are the basis for each party to generate bills to the other Party.

5.0 [*Reserved for Future Use*] [Recording for IXC AURs and Billable Messages]

5.1 AT&T KENTUCKY will provide Recording, Message Processing and message detail services to a CLEC. The terms and conditions under this Attachment will also apply when CLEC is the Recording Company.

5.2 Responsibilities of the Parties:

5.2.1 AT&T KENTUCKY will record all IXC Transported messages for CLEC carried over all Feature Group Switched Access Services that are available to AT&T KENTUCKY provided Recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by AT&T KENTUCKY provided equipment or operators) will not be recorded. The Recording equipment will be provided at locations selected by AT&T KENTUCKY.

5.2.2 AT&T KENTUCKY will perform Assembly and Editing, Message processing and provision of applicable AUR detail for IXC Transported messages if the messages are recorded by AT&T KENTUCKY.

5.2.3 AT&T KENTUCKY will provide AURs that are generated by AT&T KENTUCKY.

5.2.4 Assembly and Editing will be performed on all IXC transported messages recorded by AT&T KENTUCKY.

5.2.5 Standard EMI Record formats for the provision of Billable Message detail and AUR detail will be established by AT&T KENTUCKY and provided to CLEC.

5.2.6 Recorded Billable Message detail and AUR detail will not be sorted to furnish detail by specific End Users, by specific groups of End Users, by officer, by feature group or by location.

5.2.7 AT&T KENTUCKY will provide message detail to CLEC in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable by both Parties. In order for CLEC to receive End User billable Records, CLEC may be required to obtain CMDS Hosting service from AT&T or another CMDS Hosting service provider.

5.2.8 AT&T KENTUCKY requires CLEC to obtain a Hosted RAO code to receive AURs and End User billable records.

5.2.9 CLEC will identify separately the location where the Data Transmissions should be sent (as applicable) and the number of times each month the information should be provided. AT&T KENTUCKY reserves the right to limit the frequency of transmission to existing AT&T KENTUCKY processing and work schedules, holidays, etc.

5.2.10 AT&T KENTUCKY will determine the number of data files required to provide the AUR detail to CLEC.

- 5.2.11 Recorded Billable Message detail and/or AUR detail previously provided CLEC and lost or destroyed through no fault of AT&T KENTUCKY will not be recovered and made available to CLEC except on an individual case basis at a cost determined by AT&T KENTUCKY.
- 5.2.12 When AT&T KENTUCKY receives rated Billable Messages from an IXC or another LEC that are to be billed by CLEC, AT&T KENTUCKY may forward those messages to CLEC.
- 5.2.13 AT&T KENTUCKY will record the applicable detail necessary to generate AURs and forward them to CLEC for its use in billing access to the IXC.
- 5.2.14 When CLEC is the Recording Company, CLEC agrees to provide its recorded Billable Messages detail and AUR detail data to AT&T KENTUCKY under the same terms and conditions of this Section.

5.3 Basis of Compensation:

- 5.3.1 AT&T KENTUCKY, as the Recording Company, agrees to provide recording, Assembly and Editing, Message Processing and Provision of Message detail for AURs ordered/required by CLEC in accordance with this Section on a reciprocal, no charge basis. CLEC, as the Recording Company, agrees to provide any and all AURs required by AT&T KENTUCKY on a reciprocal, no charge basis. The Parties agree that this mutual exchange of Records at no charge to either Party shall otherwise be conducted according to the guidelines and specifications contained in the MECAB document.

5.4 Limitation of Liability

- 5.4.1 Except as otherwise provided herein, Limitation of Liability will be governed by the General Terms and Conditions of this Agreement.
- 5.4.2 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- 5.4.3 When either Party is notified that, due to error or omission, incomplete data has been provided to the non-recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the details initially were made available to the non-Recording Company. If written notification is not received within sixty (60) calendar days, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company.
- 5.4.4 If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, Assembly and Editing, rating,

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Message Processing and/or transmission of message detail, both Parties will estimate the volume of the lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.

5.4.5 Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data.

6.0 Alternately Billed Traffic

6.1 The Parties acknowledge that calls will be placed using the local service of one Party that will be billable to the End User for local service of another Party. In order to ensure that these calls are properly accounted for and billed to the appropriate End User, the Parties have established procedures to accomplish these objectives as described in a separate Attachment Non-Intercompany Settlements (NICS).

ATTACHMENT 02 –

ABT: NON-INTERCOMPANY SETTLEMENTS (NICS)

1.0 Introduction

- 1.1 This Attachment sets forth the terms and conditions under which AT&T KENTUCKY will perform the revenue settlement of LEC-carried intrastate/intraLATA or interstate/intraLATA local/toll alternately billed calls between each of the aforementioned regions and the CLEC via the Centralized Message Distribution System (CMDS) Non-Intercompany Settlement (NICS) reports.

2.0 Definitions

- 2.1 "Earning Company" is the company that provides Telecommunications Service to End Users that originate alternately billed calls.
- 2.2 "Non-Intercompany Settlement (NICS)" means a revenue settlement process for messages which originate from CLEC and bill to AT&T KENTUCKY and messages which originate from AT&T KENTUCKY and bill to CLEC. NICS messages must originate and bill within AT&T KENTUCKY's "Non-Intercompany Settlements System" or "NICS System," which means 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 (LECs) within a single CMDS 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 AT&T KENTUCKY.

3.0 General Provisions

- 3.1 NICS shall apply only to alternately billed messages (calling card, third number billed and collect calls) originated by AT&T KENTUCKY billed by CLEC (when CLEC is using its own End Office Switch), or messages originated by CLEC and billed by AT&T KENTUCKY within the same AT&T KENTUCKY territory (i.e., messages for intrastate/intraLATA traffic only). Earning Company will pay the Billing Party a per message billing and collection fee as indicated in the Pricing Sheet.
- 3.2 AT&T KENTUCKY will also collect the revenue earned by CLEC within the AT&T KENTUCKY territory from another LEC also within the AT&T KENTUCKY where the messages are billed, less a per message billing and collection fee indicated in the Pricing Sheet, on behalf of CLEC. AT&T KENTUCKY will remit the revenue billed by CLEC within region to the LEC also within region, where the messages originated, less a per message billing and collection fee indicated in the Pricing Sheet. These two amounts will be netted together by AT&T KENTUCKY and the resulting charge or credit issued to CLEC via a monthly invoice in arrears.
- 3.3 NICS does not extend to 900 or 976 calls or to other pay per call services.
- 3.4 The Telcordia Technologies NICS report is the source for revenue to be settled between AT&T KENTUCKY and CLEC. NICS settlement will be incorporated into CLEC's monthly invoice.
- 3.5 NICS does not include any interLATA and/or intraLATA long distance charges assessed by an Interexchange Carrier (IXC).
- 3.6 ***[The Billing Party will use commercially reasonable efforts to collect messages billed on behalf of the Earning Party. Uncollectible amounts will be the responsibility of the Earning Party provided however that the Billing Party will provide the Earning Party with information (Billing name and address, etc.) to allow Earning Party to separately pursue collections of unpaid charges. Such uncollected amounts will be returned to Billing Party.] [The Party billing the End User shall be responsible for all uncollectible amounts.]***
- 3.7 Net payment shall be due within thirty (30) calendar days of the date of the invoice.

4.0 Responsibilities of the Parties

- 4.1 Each Party is responsible for submitting the appropriate Exchange Message Interface (EMI) End User billable record (as defined in the Telcordia Technologies NICS System Specifications document) to Telcordia CMDS for inclusion in the NICS report when an alternately billed call originates from its End User.
- 4.2 Nothing herein requires CLEC to incur licensing or subscription fees with Telcordia or any other industry administrative body for purposes of complying with this Attachment.

5.0 Limitation of Liability

- 5.1 Except as otherwise provided herein, Limitation of Liability will be governed by the General Terms & Conditions of this Agreement:

- 5.1.1 AT&T KENTUCKY assumes no liability for any LEC's or CLEC's receipt of appropriate revenues due to it from any other entity. CLEC agrees that AT&T KENTUCKY will not be liable to it for damages (including, but not limited to, lost profits and exemplary damages) which may be owed to it as a result of any inaccurate or insufficient information resulting from any entity's actions, omissions, mistakes, or negligence and upon which AT&T KENTUCKY may have relied in preparing settlement reports or performing any other act under this Attachment.
- 5.1.2 AT&T KENTUCKY will not be liable for any losses or damages arising out of errors, interruptions, defects, failures, or malfunction of services provided pursuant to this Attachment, including those arising from associated equipment and data processing systems, except such losses or damages caused by the sole negligence of AT&T KENTUCKY. Any losses or damage for which AT&T KENTUCKY is held liable under this Attachment will in no event exceed the amount that CLEC would have billed AT&T KENTUCKY per CLEC's existing tariff for the services provided hereunder during the period beginning at the time AT&T KENTUCKY receives notice of the error, interruption, failure or malfunction, to the time service is restored.
- 5.1.3 AT&T KENTUCKY assumes no responsibility with regard to the correctness of the data supplied by CLEC when this data is accessed and used by a Third Party.

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Attachment	State	Product	Rate Element Description	COS (Class of Service)	USOC	Zone	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC) First	Non-Recurring Charge (NRC) Additional	Per Unit
1	KY	CALL TRANSPORT AND TERMINATION	Rate for all ISP-Bound, per MOU				\$ 0.0007			MOU
2	KY	ANCILLARY MESSAGE COMPENSATION (PER MESSAGE)	Non Intercompany Settlement (NICS) Billing Charge (Per Message)	1ZZCN			\$ 0.05			Message