

By and Between
BellSouth Telecommunications, Inc.
And
Winstar

**BELLSOUTH
MICROWAVE COLLOCATION
MASTER AGREEMENT**

THIS AGREEMENT, made this 9th day of May, 2000, by and between BellSouth Telecommunications, Inc., ("BellSouth") a corporation organized and existing under the laws of the State of Georgia, and Winstar Wireless Inc., ("Winstar") a (corporation) organized and existing under the laws of Delaware;

W I T N E S S E T H

WHEREAS, [Winstar](#) is a telecommunications carrier and wishes to occupy space on the roofs of BellSouth Central Office Buildings for the physical collocation of microwave equipment as defined herein for the purpose of interconnection to BellSouth's facilities;

WHEREAS, BellSouth has space available on its Central Office rooftop(s) which [Winstar](#) desires to utilize; and

WHEREAS, BellSouth is willing to make such space available to Winstar on its Central Office rooftop(s) subject to all terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

MICROWAVE COLLOCATION

Where technically feasible and where space is available, BellSouth will provide for physical collocation of Winstar's microwave equipment on the roofs of BellSouth's Central Office Buildings. Such equipment will be limited to that necessary for interconnection of Winstar's network facilities to BellSouth's network or access to BellSouth's unbundled network elements.

Microwave Collocation includes placement of supporting masts, non-penetrating roof mounts ("NPRM"), penetrating pipe stands, parapet mounts, and microwave antenna(e) on the roof top or other suitable exterior spaces of BellSouth's Central Offices and does not include the construction of towers. The Parties will work together to determine the preferable type of antenna mount reasonably considering such factors as permitting requirements, roof maintenance issues and any other relevant factors. BellSouth shall have final approval of the type of antenna mount. The Parties agree that the elements listed below reflect requirements for Microwave Collocation, which shall be provided in accordance with the rates, terms and conditions set forth below. The Parties acknowledge that Microwave Collocation requires unobstructed line-of-sight. Unobstructed line-of-sight will be provided by BellSouth where technically feasible but is not guaranteed to be available. Winstar accepts the responsibility of determining unobstructed line-of-sight at any location where Winstar applies for Microwave Collocation.

1. PROVISIONING PROCESS AND FEES

A. Term

The Term of this Agreement shall be for an initial period of two (2) years, beginning on the Agreement date stated above and ending two (2) years later on the month and day corresponding to such date.

B. Initial Site Visit

Winstar will provide a Site Visit Request to BellSouth, in writing, setting forth the names of the BellSouth Central Office Buildings(s) Winstar wishes to visit for potential Microwave Collocation. Such site visit consists of Winstar representatives and appropriate BellSouth personnel visiting a BellSouth Central Office building for the purpose of determining whether an unobstructed line-of-sight is technically feasible. Winstar will be responsible for making an unobstructed line-of-sight determination. Such Site Visit does not obligate Winstar to request, or BellSouth to provide, Microwave Collocation on the site. The site visit will take place within fifteen (15) business days of receipt by BellSouth of Winstar's Site Visit Request or as soon thereafter as can be scheduled by the Parties.

Winstar will submit a Site Visit Request fee of \$250.00 and will pay for the reasonable cost BellSouth incurs for travel, if necessary, for each site requested with each Site Visit not to exceed two hours. Charges for site visits that take longer than two (2) hours will be charged by BellSouth to Winstar at BellSouth's loaded labor rates on a per hour basis in addition to the \$250.00 fee. BellSouth will make every effort possible to use resources near the requested location to minimize travel required. If BellSouth determines that airline travel is required, BellSouth will contact Winstar in an effort to discuss possible alternatives.

C. Microwave Collocation Application

Winstar shall submit the Application and Inquiry document and appropriate collocation application fee and BellSouth will respond to Microwave Collocation Application(s) pursuant to the relevant sections of BellSouth's FCC #1, Section 20 tariff (BellSouth Virtual Expanded Interconnection) , in addition to a Microwave Collocation Agreement for each central office building where Winstar seeks Microwave Collocation. This application and fees will apply both to space on the roof as well as space inside the BellSouth central office.

Winstar shall provide BellSouth with the following data on the application to the extent available recognizing that certain information may change depending on the final determination of the location providing line of sight:

- Type of antenna mount (pipe, NPRM)
- Type of equipment to be collocated within Winstar's case (vendor, capacity)
- Line of sight requirements (Azimuth)
- Relevant information includes: Station Name, Call Sign, Latitude, Longitude, Primary Antenna Type, Equipment Type, Equipment Emission, Power (dBm/Watts), Receive Level (dBm), EIRP (dBm/Watts), Transmit Frequency (MHz)
- WEIGHT AND CONFIGURATION
- Other relevant information as identified at the INITIAL site visit.

Roof Inspection: BellSouth may require a roof inspection at any site where Winstar requests Microwave Collocation. Winstar will bear the reasonable cost of the inspection including reasonable travel cost if any. BellSouth intends to use an independent contractor which may be accompanied by BellSouth personnel. The roof inspection fee shall be assessed on an individual case basis unless negotiated as a flat rate by the Parties. Such Roof Inspection does not obligate BellSouth to provide Microwave Collocation on the site.

If BellSouth concludes that rooftop/exterior space which provides Winstar with unobstructed line-of-sight does not appear to be technically feasible, BellSouth will provide Winstar a written explanation of such technical infeasibility within thirty (30) business days of BellSouth's receipt of the collocation application including those cases where BellSouth's known business plans provide for or include an addition to the building which would impact the line of sight. This explanation will be included in the response to Winstar's application.

BellSouth or its designated subcontractors shall perform all necessary work associated with the Microwave Collocation arrangement involving power and building modifications unless otherwise agreed to by the Parties. All work performed shall be done by a BellSouth certified vendor. Winstar shall select a vendor which has been approved as a BellSouth Certified Vendor to perform all engineering and installation work of the Microwave Collocation arrangement pursuant to TR-73503, BST Electrical Standards for Wireless Service Providers on BellSouth facilities Issue 1, Sept 1996, and BST Building Construction and Fire Safety Standards – Section 16170 – June 1998. In some cases Winstar must select separate BellSouth Certified Vendors for transmission equipment, switching equipment and power equipment. BellSouth shall provide Winstar with a list of Certified Vendors pursuant to Section 20.20 of BellSouth's FCC #1, Virtual Expanded Interconnection tariff and the Certified Vendor shall bill Winstar directly for all work performed for Winstar and BellSouth shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor. BellSouth shall consider certifying Winstar or any vendor proposed by Winstar.

If rooftop/exterior space is available BellSouth shall provide Winstar an estimate for such microwave collocation as described more fully in provision 1.D at the same time BellSouth provides its interior collocation space quote.

D. Preparation of Estimate / Application Response

Within thirty (30) business days of receiving from Winstar a single complete and accurate Application and Inquiry document, BellSouth will provide, as more fully described below, an estimate including an estimate for the Non-Recurring Charges and Monthly Recurring Charges pursuant to the rates and terms set forth in BellSouth's FCC #1, Section 20 tariff for virtual collocation and Exhibit B.

The estimate shall reflect the specifications submitted by Winstar and may change based on the actual field conditions encountered during construction.

(1) Estimate:

(a) The Estimate /Application Response shall set forth separate estimated charges for the following work related to the installation of the Microwave Antenna Arrangement.

(i) **Architectural Plan and Structural Review:**

This shall be the reasonable sum of hourly charges of BellSouth Architects or its contractors necessary to review the plans for the Microwave Collocation Arrangement. This will include applicable consulting charges and fees for reviewing permitting material and/or assisting Winstar in the permitting process to the extent required.

(ii) **Permitting Review:**

This shall be the sum of the hourly charges of BellSouth Property and Services Management and/or Project Managers whose time was reasonably necessary and actually spent reviewing permitting material and/or assisting Winstar in the permitting process. BellSouth shall have final approval authority on all proposed conditions, (which shall not be unreasonably withheld) imposed by relevant jurisdictions and BellSouth shall have the right to be represented at all hearings in connection with governmental approvals.

(iii) **Exterior (and Related Interior) Building Modification Work:**

BellSouth will include a quote for BellSouth to perform coring within the Central Office, roof strengthening or any other exterior or related interior building modification that may be required.

(iv) **Supervision of General Contractor:**

This shall be the reasonable sum of the hourly charges, if necessary, of any BellSouth Property and Services Management personnel, Consultants, or Project Managers who monitor the Microwave Antenna Support Structure installation performed by Winstar's contractor. The level of BellSouth's personnel or consultants shall be commensurate with the requirements for supervising the project and monitoring construction.

(v) **Special Security Construction:**

If BellSouth demonstrates that new secure access to the Microwave Collocation location is reasonably necessary, the costs associated with the construction of such access shall be described on a separate schedule to be provided by BellSouth to Winstar.

(b) **Recurring Charges**

These consist of:

(i) **Monthly Recurring Roof-top Space Rental Fee:**

The Monthly Recurring Roof-top Space Rental Fee shall be on a per square foot basis with a minimum of 12 square feet per microwave arrangement as set forth in this Agreement in Exhibit B. Winstar is limited to building and structural support constraints for determining the number of antenna(e) which can be placed on a roof mount, pipe stand, or parapet mount. The diameter of the microwave antenna(e) will be subject to a height limitation of twenty (20) feet above the building or point of attachment, subject to line-of-sight, safety, and structural engineering guidelines, (e.g., weight, wind load). Such equipment will be subject to a structural analysis to be performed by BellSouth's Structural Engineer at Winstar's sole expense, to ensure that the equipment does not overload the building structure. If any structural reinforcement is required in order to accommodate the placement of the requested diameter and height of such microwave antenna(e), Winstar will not be allowed to place such microwave antenna(e). Winstar agrees that the height of the structure will be no greater than the minimum required to accommodate line of sight requirements. At no time shall an antenna (e) be directed across open roof space without approval of BellSouth which shall not be unreasonably withheld. Winstar shall be responsible for ensuring that the arrangement complies with local zoning requirements.

The billing for the Rooftop Space Rental Fee shall begin the date the interior and rooftop space preparation activities are complete and the space is made available to Winstar, or the date Winstar first begins the Rooftop microwave equipment installation, whichever is sooner. BellSouth will work with Winstar to avoid unreasonable time differences between the completion of rooftop space preparation and interior collocation space construction.

E. Firm Order

All estimates shall be valid for thirty (30) days from issuance, and Winstar shall accept or reject within such time period, unless an extension is requested in writing by Winstar and agreed to by BellSouth. Such extension will not exceed thirty (30) days. To accept an estimate, Winstar shall so state in writing by submitting a Firm Order to BellSouth and shall pay BellSouth 50% of the total estimated charges ("Initial Payment") with the balance of the actual charges due upon completion of the Microwave Collocation area and any necessary supporting electrical or building modification work. Payment requirements will be commensurate with BellSouth's FCC #1tariff, Section 20, and Exhibit B.

BellSouth will permit one accompanied site visit to Winstar's designated Microwave collocation arrangement location after receipt of the Firm Order without charge to Winstar.

F. Pre-Design Meeting

Unless otherwise agreed to by the Parties, a joint planning meeting or other method of joint planning between BellSouth and Winstar will commence within a maximum of 15 business days from BellSouth's receipt of a Firm Order and the payment of agreed upon fees. At such meeting, the Parties will agree to the preliminary design of the Microwave Collocation Space and the equipment configuration requirements as reflected in the Application and affirmed in the Firm Order. The Collocation Space Completion time period will be provided to Winstar during the joint planning meeting or as soon as possible thereafter. BellSouth will complete all design work following the joint planning meeting.

G. Equipment and Testing:

Winstar shall be responsible for providing, at its sole expense, the antenna (e), coaxial cable, brackets, connectors, support structure, grounding and bonding materials, and weather-proofing materials for such support structure or antenna (e) required for the Microwave Collocation. Winstar shall also be solely responsible for final adjustments (e.g., pointing) of the antenna (e).

H. Use Permits:

Winstar shall be responsible for obtaining all relevant Use Permits (UPs) and shall bear all costs and fees. Winstar shall regularly apprise BellSouth of the status of such permitting and consult with BellSouth as reasonably necessary.

2. NO PROPERTY RIGHT CONFERRED

Notwithstanding anything contained herein to the contrary, Microwave Collocation shall not confer or be deemed to confer any property interest or right in BellSouth's property, and Winstar hereby acknowledges that the rights conferred hereunder shall constitute merely a non-exclusive license to use a portion of BellSouth's property solely for the purposes set forth herein. A limit of two (2) Winstar Microwave Collocation arrangements per Central Office will be permitted unless otherwise agreed to by the Parties.

Title to Winstar's Microwave Collocation equipment shall remain in Winstar as the property of Winstar and shall not become fixtures to BellSouth's property.

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3. RESPONSIBILITY OF THE PARTIES

- A. Winstar shall obtain any and all applicable and necessary permits, variances, licenses, approvals and authorizations from the governmental agencies with jurisdiction, including without limitation, use permits, buildings permits, FCC licenses and FAA approval, if required, to operate and maintain Winstar's facilities during the Term of this Agreement.
- B. Winstar shall not use BellSouth's property or permit Winstar's agents or contractors to do anything in or about the Central Office (s) in conflict with any applicable law affecting the condition, use or occupancy of the property or the installation, operation or maintenance of Winstar's Microwave Collocation equipment. Winstar shall not commit any public or private nuisance or any other act or practice which might or would materially disturb the quiet enjoyment of any occupant of nearby properties.
- C. Where BellSouth performs any of the work pursuant to the quotes set forth in 1.C.(2)(a), BellSouth shall select the architect, engineers, surveyors, contractors, suppliers, consultants and subcontractors which may be necessary to develop plans, furnish materials and equipment, and perform construction work. BellSouth shall manage all such work in accordance with the plans and specifications approved by the Parties, all applicable laws, codes and regulations, and shall require that all contractors perform their work in a good workmanlike manner. BellSouth shall require that all BellSouth Contractors include Winstar as an ADDITIONAL INSURED to any policies of insurance maintained by the Contractor for purposes of the work, and shall indemnify Winstar from losses, costs and expenses incurred as a result of contractor's work. Winstar hereby acknowledges and agrees that BellSouth shall not be liable for the work performed, material, supplies, or work products furnished by any contractor, and that Winstar shall look solely to the contractor and any warranties, indemnification or insurance furnished by such Contractor, waiving and releasing BellSouth from any claim or liability therefrom except to the extent of the negligence or willful misconduct of BellSouth in the performance of its project management activities.
- D. Notwithstanding any other provision of this Agreement, Winstar hereby acknowledges that BellSouth may have existing wireless communications facilities of its own or of other tenants or licensees on or at BellSouth's Central Office, and/or BellSouth may desire from time to time throughout the term of this Agreement to enter into agreements with other wireless communications providers for the installation, operation and maintenance of communications facilities on or at BellSouth's Property ("Other Wireless Carriers"). Winstar shall cooperate with BellSouth and all Other Wireless Carriers so as to reasonably accommodate the needs and requirements of such Other Wireless Carriers with respect to the installation, operation, use and maintenance of their equipment and facilities, and all necessary alterations, modifications and other improvements to BellSouth's property, including utility connections and access. Subject to ownership of any exclusive frequency rights, Winstar's facilities shall not physically, electronically, or inductively interfere with the existing BellSouth or other customers' or tenants' existing facilities. Each transmitter individually and all transmitters collectively at a given location shall comply with appropriate federal, state, and/or local regulations governing the safe levels of RF radiation. The foregoing obligations shall apply equally to all Other Wireless Carriers.
- E. In the event Winstar desires to relocate any of its then-existing Microwave Collocation facilities to a different place on the relevant BellSouth Central Office rooftop, Winstar shall submit a new application with fee to BellSouth specifying the new location Winstar

proposes to occupy. If the relocation does not require BellSouth to expend capital, then a Subsequent Application fee will apply as covered in Exhibit B.

BellSouth shall, within thirty (30) business days of receipt of a complete application, approve such relocation or describe, in writing, why such relocation is not technically feasible.

F. Winstar's Insurance Obligations

1. Winstar shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Section 3F and underwritten by insurance companies licensed to do business in the states applicable under this Agreement and having a Best's Insurance Rating of A-.

2. Winstar shall maintain the following specific coverage:

Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). BellSouth shall be named as an Additional Insured on the Commercial General Liability policy as specified herein.

a. Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

b. All Risk Property coverage on a full replacement cost basis insuring all of Winstar's real and personal property situated on or within BellSouth's Central Office location(s).

c. Winstar may elect to purchase business interruption and contingent business interruption insurance, having been advised that BellSouth assumes no liability for loss of profit or revenues should an interruption of service occur.

d. The limits set forth in Section 3F above may be increased by BellSouth from time to time during the term of this Agreement upon thirty (30) days notice to Winstar to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

e. All policies purchased by Winstar shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BellSouth. All insurance must be in effect on or before the date equipment is delivered to BellSouth's Premises and shall remain in effect for the term of this Agreement or until all Winstar's property has been removed from BellSouth's Premises, whichever period is longer. If Winstar fails to maintain required coverage, BellSouth may pay the premiums thereon and seek reimbursement of same from Winstar.

f. Winstar shall submit certificates of insurance reflecting the coverage required pursuant to this Section a minimum of ten (10) business days prior to the commencement of any work in the Collocation Space. Failure to meet this interval may result in construction and equipment installation delays. Winstar shall

arrange for BellSouth to receive thirty (30) business days' advance notice of cancellation from Winstar's insurance company. Winstar shall forward a certificate of insurance and notice of cancellation/non-renewal to BellSouth at the following address:

BellSouth Telecommunications, Inc.
Attn.: Risk Management Coordinator
675 W. Peachtree Street
Rm. 17H53
Atlanta, Georgia 30375

- g. Winstar must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations.
- h. Self-Insurance. If Winstar's net worth exceeds five hundred million dollars (\$500,000,000), Winstar may elect to request self-insurance status in lieu of obtaining any of the insurance required in Sections XXX and XXX. Winstar shall provide audited financial statements to BellSouth thirty (30) days prior to the commencement of any work in the Collocation Space. BellSouth shall then review such audited financial statements and respond in writing to Winstar in the event that self-insurance status is not granted to Winstar. If BellSouth approves Winstar for self-insurance, Winstar shall annually furnish to BellSouth, and keep current, evidence of such net worth that is attested to by one of Winstar's corporate officers. The ability to self-insure shall continue so long as the Winstar meets all of the requirements of this Section. If the Winstar subsequently no longer satisfies this Section, Winstar is required to purchase insurance as indicated by Sections XXX and XXX.

The net worth requirements set forth in Section XXX may be increased by BellSouth from time to time during the term of this Agreement upon thirty (30) days' notice to Winstar to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

- i. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.
- G. At its sole cost and expense, Winstar shall maintain Winstar's Microwave equipment, including without limitation, all necessary repairs, replacements and restorations. In addition, Winstar shall keep its Microwave Collocation space in a good, neat, sanitary and workmanlike condition. If Winstar shall fail to keep its Microwave Collocation space in such workmanlike condition after ten (10) days written notice from BellSouth, BellSouth shall have the right but not the obligation to clean up the space on Winstar's behalf. In such event, Winstar shall be liable to BellSouth for the cost and expense of such work, upon written demand.

4. SECURE ACCESS

- A. A security escort will be required whenever Winstar or its approved agent desires access to the roof after the one accompanied site visit allowed pursuant to Section 1D prior to completing BellSouth's Security Training requirements as specified below. Rates for a security escort are assessed in one-half (1/2) hour increments according to the schedule as set forth in Section 20.31G of the BellSouth Virtual Expanded Interconnection Tariff.
- B. The security and safety requirements set forth in this section are as stringent as the security requirements BellSouth maintains at its own premises either for their own employees or for authorized contractors. Only Winstar employees, BellSouth Certified Contractors and authorized employees, or authorized agents of Winstar will be permitted in the BellSouth Premises. Winstar shall provide its employees and agents with picture identification which must be worn and visible at all times while in areas in or around the Premises. The photo Identification card shall bear, at a minimum, the employee's name and photo, and the Winstar name. BellSouth reserves the right to remove from its premises any employee of Winstar not possessing identification issued by Winstar or who have violated any of BellSouth's policies as outlined in the CLEC Security Training documents. Winstar shall hold BellSouth harmless for any damages resulting from such removal of its personnel from BellSouth premises. Winstar shall be solely responsible for ensuring that any Guest of Winstar is in compliance with all subsections of this Section 4.
- C. Winstar will be required, at its own expense, to conduct a statewide investigation of criminal history records for each Winstar employee being considered for work on the BellSouth Premises, for the states/counties where the Winstar employee has worked and lived for the past five years. Where state law does not permit statewide collection or reporting, an investigation of the applicable counties is acceptable.
- D. Winstar will be required to administer to their personnel assigned to the BellSouth Premises security training either provided by BellSouth, or meeting criteria defined by BellSouth.
- E. Winstar shall not assign to the BellSouth Premises any personnel with records of felony criminal convictions. Winstar shall not assign to the BellSouth Premises any personnel with records of misdemeanor convictions, except for misdemeanor traffic violations, without advising BellSouth of the nature and gravity of the offense(s). BellSouth reserves the right to refuse building access to any Winstar personnel who have been identified to have misdemeanor criminal convictions. Notwithstanding the foregoing, in the even that Winstar chooses not to advise BellSouth of the nature and gravity of any misdemeanor conviction, Winstar may, in the alternative, certify to BellSouth that it shall not assign to the BellSouth Premises any personnel with records of misdemeanor convictions (other than misdemeanor traffic violations).
- F. For each Winstar employee requiring access to a BellSouth Premises pursuant to this Agreement, Winstar shall furnish BellSouth, prior to an employee gaining such access, a certification that the aforementioned background check and security training were completed. The certification will contain a statement that no felony convictions were found and certifying that the security training was completed by the employee. If the employee's criminal history includes misdemeanor convictions,

Winstar will disclose the nature of the convictions to BellSouth at that time. In the alternative, Winstar may certify to BellSouth that it shall not assign to the BellSouth Premises any personnel with records of misdemeanor convictions other than misdemeanor traffic violations.

- G. At BellSouth's request, Winstar shall promptly remove from the BellSouth's Premises any employee of Winstar BellSouth does not wish to grant access to its premises 1) pursuant to any investigation conducted by BellSouth or 2) prior to the initiation of an investigation in the event that an employee of Winstar is found interfering with the property or personnel of BellSouth or another CLEC, provided that an investigation shall promptly be commenced by BellSouth.
- H. Notification to BellSouth. BST reserves the right to interview Winstar's employees, agents, or contractors in the event of wrongdoing in or around BellSouth's property or involving BellSouth's or another CLEC's property or personnel, provided that BellSouth shall provide reasonable notice to Winstar's Security contact of such interview. Winstar and its contractors shall reasonably cooperate with BellSouth's investigation into allegations of wrongdoing or criminal conduct committed by, witnessed by, or involving Winstar's employees, agents, or contractors. Additionally, BellSouth reserves the right to bill Winstar for all reasonable costs associated with investigations involving its employees, agents, or contractors if it is established and mutually agreed in good faith that Winstar's employees, agents, or contractors are responsible for the alleged act. BellSouth shall bill Winstar for BellSouth property which is stolen or damaged where an investigation determines the culpability of Winstar's employees, agents, or contractors and where Winstar agrees, in good faith, with the results of such investigation. Winstar shall notify BellSouth in writing immediately in the event that the CLEC discovers one of its employees already working on the BellSouth premises is a possible security risk. Upon request of the other Party, the Party who is the employer shall discipline consistent with its employment practices, up to and including removal from the BellSouth Premises, any employee found to have violated the security and safety requirements of this section. Winstar shall hold BellSouth harmless for any damages resulting from such removal of its personnel from BellSouth premises.
- I. Use of Supplies. Unauthorized use of telecommunications equipment or supplies by either Party, whether or not used routinely to provide telephone service (e.g. plug-in cards,) will be strictly prohibited and handled appropriately. Costs associated with such unauthorized use may be charged to the offending Party, as may be all associated investigative costs.
- J. Use of Official Lines. Except for non-toll calls necessary in the performance of their work, neither Party shall use the telephones of the other Party on the BellSouth Premises. Charges for unauthorized telephone calls may be charged to the offending Party, as may be all associated investigative costs.
- K. Accountability. Full compliance with the Security requirements of this section shall in no way limit the accountability of either Party to the other for the improper actions of its employees

5 CABLE PROVISIONING

Winstar is responsible for providing, running, and maintaining the cable from the radio frequency (RF) equipment to the collocation cage through the use of a BellSouth Certified Vendor. BellSouth transmission engineering bonding and grounding rules MUST be followed where the cable enters the central office and at the equipment location. BellSouth shall designate the point of entrance of the cable from the roof into the BellSouth Central Office building. BellSouth will be responsible for providing any necessary cable support structure at a rate indicated in ExhibitB. A BellSouth consultant must approve how the cable will be run.

6. LINE OF SIGHT

BellSouth will manage roof space on a first-come /first-served basis. BellSouth will work cooperatively with Winstar in determining suitable space for Winstar equipment. Once the parties mutually determine an initial location which provides for line of sight pursuant to 1A, and 1E above, Winstar is guaranteed a clear line of sight from the antenna mount and the edge of BellSouth's roof line. If BellSouth requires a building enhancement modification or through the placement of additional equipment obstructs Winstar's existing line of sight, BellSouth will work with Winstar to move the antenna mount or raise the height of the antenna mount for a clear line of sight. The costs of this modification will be borne by BellSouth.

If a third party elects to place equipment on the roof that obstructs an existing line of sight, the third party application will be denied unless all three parties mutually agree to move an existing arrangement to allow for a clear line of sight. The costs of this application will be borne by the third party.

7. ANTENNA MODIFICATIONS

Winstar is limited to placement of two microwave antenna (e) within the designated space. Winstar must submit an application with a fee before adding additional equipment to the microwave collocation space or to move equipment outside of designated space. Winstar may not construct improvements or make Major Alterations to its rooftop space or microwave transmission facilities without prior written approval from BellSouth, which will not be unreasonably withheld. BellSouth shall respond to any single request (application) within thirty (30) business days. "Major Alterations" shall include but not be limited to: (i) additional construction by Winstar of support equipment within its rooftop space, (ii) any modification to the rooftop space. "Major Alterations" shall not include (i) replacement of mounted equipment with like-sized and weight or smaller mounted equipment or similar functionality, (ii) routine repairs and maintenance to such microwave transmission facilities. Additional equipment or movement of existing equipment will require a new application and application fee. Anything outside of normal maintenance may require a subsequent application fee as indicated in Exhibit B of the Collocation Agreement.

8. USE OF ANTENNA SPACE ON OTHER BELLSOUTH TOWERS

Requirements for antenna space on existing towers that are not part of a BellSouth central office will be handled through BellSouth's Master Licensing Process.

9. EQUIPMENT REMOVAL

- A. If, at any time, BellSouth reasonably determines that any of Winstar's facilities or equipment or the installation of Winstar's facilities or equipment does not meet the requirements outlined in this Agreement, Winstar will be responsible for the costs associated with the removal of such facilities or equipment or modification of the facilities or equipment or installation thereof to render it complaint. The removal of equipment must be done by a BellSouth Certified Vendor unless the Parties agree that another certified vendor can be used. If Winstar fails to correct any non-compliance with these standards or fails to demonstrate that the equipment is compliant within fifteen (15) days' written notice to Winstar, BellSouth may have the facilities or equipment removed or the condition correct at Winstar's expense. Removal of Microwave Collocation equipment shall be as specified in paragraph 9B below.
- B. Except where otherwise agreed to by the Parties, Winstar may terminate occupancy in a particular Collocation Space upon thirty (30) business days prior written notice to BellSouth. Upon termination of such occupancy, Winstar at its expense shall remove its equipment and other property from the Collocation Space. Winstar shall have thirty (30) business days from the termination date to complete such removal, provided, however, that Winstar shall continue payment of monthly fees to BellSouth until such date as Winstar has fully vacated the Collocation Space. Should Winstar fail to vacate the Collocation Space within thirty (30) business days from the termination date, BellSouth shall have the right to remove the equipment and other property of Winstar at Winstar's expense and with no liability for damage or injury to Winstar's property unless caused by the gross negligence or intentional misconduct of BellSouth. Upon expiration of this Agreement with respect to a Collocation Space, Winstar shall surrender such Collocation Space to BellSouth in the same condition as when first occupied by the Winstar except for ordinary wear and tear unless otherwise agreed to by the Parties.

10. NATURE OF USE

Winstar equipment must comply with BellCore Network Equipment Building System (NEBS) Requirements, Electromagnetic Compatibility and Electrical Safety Generic Criteria for Network Telecommunication Equipment (TR-NWT-001089), and FCC OET Bulletin 65 dated 08/97. Requirements of provision 20.18 of BellSouth's FCC #1 tariff also apply. The operation of Winstar's microwave equipment shall comply with all applicable federal and state RF guidelines.

11. POWER REQUIREMENTS FOR MICROWAVE ARRANGEMENT

BellSouth will not provide power or environmental support to the roof space. If BellSouth agrees in response to a specific request by Winstar to provide power or environmental support to the roof space, Winstar will bear all associated costs as specified by BellSouth to provide such services.

12. GROUNDING AND BONDING

Winstar at its expense will ensure that any microwave equipment placed on the rooftop collocation space or in the building shall be grounded and bonded according to BellSouth's standards which shall be at a minimum consistent with industry standards. BellSouth agrees that grounding and bonding requirements shall be applied in parity to itself and other Interconnectors for similar types of equipment.

13. TARIFF PROVISIONS

Any provision provided specifically herein shall be in addition to applicable provisions in BellSouth's FCC #1, Section 20 tariff, BellSouth Virtual Expanded Interconnection .

14. MECHANICS LIENS

If any mechanics lien or other liens shall be filed against property of either Party (BellSouth or Winstar), or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for the other Party or by reason of any changes, or additions to said property made at the request or under the direction of the other Party, the other Party directing or requesting those changes shall, within thirty (30) business days after receipt of written notice from the Party against whose property said lien has been filed, either pay such lien or cause the same to be bonded off the affected property in the manner provided by law. The Party causing said lien to be placed against the property of the other shall also defend, at its sole cost and expense, on behalf of the other, any action, suit or proceeding which may be brought for the enforcement of such liens and shall pay any damage and discharge any judgment entered thereon.

15. DESTRUCTION OF THE MICROWAVE COLLOCATION SPACE

In the event the Microwave Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for Winstar's permitted use hereunder, then either Party may elect within ten (10) business days after such damage, to terminate this Agreement, and if either Party shall so elect, by giving the other written notice of termination, both Parties shall stand released of and from further liability under the terms hereof. If the Microwave Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for Winstar's permitted use, or is damaged and the option to terminate is not exercised by either Party, BellSouth covenants and agrees to proceed promptly without expense to Winstar, except for improvements not the property of BellSouth, to repair the damage. BellSouth shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of BellSouth, which causes shall not be construed as limiting factors, but as

exemplary only. Winstar may, at its own expense, accelerate the rebuild of its Microwave Collocation Space and equipment provided however that a BellSouth Certified Contractor is used and the necessary space preparation has been completed. Rebuild of equipment must be performed by a BellSouth Certified Vendor. If Winstar's acceleration of the project increases the cost of the project, then those additional charges will be incurred by Winstar. Where allowed and where practical, Winstar may erect a temporary facility while BellSouth rebuilds or makes repairs. In all cases where the Microwave Collocation Space shall be rebuilt or repaired, Winstar shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Microwave Collocation Space for Winstar's permitted use, until such Microwave Collocation Space is fully repaired and restored and Winstar's equipment installed therein (but in no event later than thirty (30) business days after the Microwave Collocation Space is fully repaired and restored).

16. EMINENT DOMAIN

If the whole of the Microwave Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate with respect to such Microwave Collocation Space as of the day possession shall be taken by such public authority and rent and other charges for the Microwave Collocation Space shall be paid up to that day with proportionate refund by BellSouth of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Microwave Collocation Space shall be taken under eminent domain, BellSouth and Winstar shall each have the right to terminate this Agreement with respect to such Microwave Collocation Space and declare the same null and void, by written notice of such intention to the other Party within ten (10) business days after such taking

17. NONEXCLUSIVITY

Winstar understands that this Agreement is not exclusive and that BellSouth may enter into similar agreements with other Parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

18. NOTICES

A. Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by Winstar or BellSouth in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the parties as follows:

To BellSouth:

600 N. 19th Street

9th Floor

Birmingham, AL 35240

ATTN: CLEC Account Team

To Winstar:

1615 L Street, NW

Suite 1260

Washington, DC 20036

ATTN: Steve Murray

B. Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

19. INDEMNITY / LIMITATION OF LIABILITY

Winstar shall be liable for any damage to property, equipment or facilities or injury to person caused by the activities of Winstar, its agents or employees pursuant to, or in furtherance of, rights granted under this Agreement. Winstar shall indemnify and hold BellSouth harmless from and against any judgments, fees, costs or other expenses resulting or claimed to result from such activities by Winstar, its agents or employees.

BellSouth shall not be liable to Winstar for any interruption of Winstar's service or for interference with the operation of Winstar's communications facilities, or for any special, indirect, incidental or consequential damages arising in any manner, including BellSouth's negligence, out of the use of the Microwave Collocation Space(s) and Winstar shall indemnify, defend and hold BellSouth harmless from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect, incidental or consequential damages.

Nothing contained herein shall require Winstar to indemnify and hold harmless BellSouth for any claims to the extent caused by BellSouth's sole negligence, gross negligence or willful misconduct.

20. PUBLICITY

17.1 Winstar agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the tradenames, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of BellSouth Corporation and/or any of its affiliated companies, and Winstar further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without BellSouth's prior written consent.

21. FORCE MAJEURE

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

22. YEAR 2000 COMPLIANCE

Each party warrants that it has implemented a program the goal of which is to ensure that all collocated equipment, software, hardware and related materials (collectively called "Systems") delivered, connected with BellSouth or supplied in the furtherance of the terms and conditions specified in this Agreement: (i) will record, store, process and display calendar dates falling on or after January 1, 2000, in the same manner, and with the same functionality as such software records, stores, processes and calendar dates falling on or before December 31, 1999; and (ii) shall include without limitation date data century recognition, calculations that accommodate same

century and multicity formulas and date values, and date data interface values that reflect the century.

23. ASSIGNMENT

Winstar acknowledges that this Agreement does not convey any right, title or interest in the Central Office to Winstar. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

24. NO IMPLIED WAIVER

No consent or waiver by either party to or of any breach of any covenant, term, condition, provision or duty of the other party under this Agreement shall be construed as a consent to or waiver of any other breach of the same or any other covenant, term, condition, provision or duty. No such consent or waiver shall be valid unless in writing and signed by the party granting such consent or waiver.

25. GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

26. COMPLIANCE WITH LAWS

The Parties agree to comply with all applicable federal, state, and local laws, rules and regulations in the performance of this Agreement.

27. RESOLUTION OF DISPUTES

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission in the state where the services are provided pursuant to this Agreement for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

28. SECTION HEADINGS

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

29. AUTHORITY

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

30. REVIEW OF AGREEMENT

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The Parties further agree that this Agreement shall be deemed to have been drafted by both BellSouth and Winstar and the terms and conditions contained herein shall not be construed any more strictly against one party or the other.

31. FILING OF AGREEMENT

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, said costs shall be borne by Winstar.

32. ENTIRE AGREEMENT

This Agreement contains the full understanding of the Parties (superseding all prior or contemporaneous correspondence between the Parties) and shall constitute the entire agreement between BellSouth and Winstar and may not be modified or amended other than by a written instrument signed by both parties. If any conflict arises between the terms and conditions contained in this Agreement and those contained in a filed tariff, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the day and year first above written.

BELLSOUTH TELECOMMUNICATIONS,
INC.

Winstar Wireless, Inc.

On File
Authorized Signature

On File
Authorized Signature

Jerry Hendrix
Print or Type Name

Russell C. Merbeth
Print or Type Name

Senior Director
Title

VP, Legal/Regulatory
Title

May 9, 2000
Date

MICROWAVE COLLOCATION RATE ELEMENT DEFINITIONS AND CONDITIONS

Non-recurring charges - Relating to Microwave Roof Equipment

1) **Microwave Preparation Fees**

Architectural Plan and Structural Review
Exterior and Related Interior Building Modification Work
General Contractor Supervision
Special Security Construction

2) **Coring/Cable Support Structure**

Electrical and Building modification work for coring
Weather Proofing
Cable Support Structure

3) **Roof Preparation (if applicable)**

Engineering Study (To develop roof preparation alternatives/costs)

4) **Escort - charge for access to roof**

Charge for access to Roof

Recurring charges - Relating to Microwave Roof Equipment

1) **Roof Space Lease Charge**

Monthly rate for leasing rooftop or other suitable exterior space on BellSouth CO on a per square foot basis.

MICROWAVE COLLOCATION RATES

Non-recurring charges

- | | |
|--|------------------------|
| 1) Microwave Prep fee | [ICB FOR EACH CO] |
| 2) Coring/Cable Support Structure | [ICB FOR EACH CO] |
| 3) Roof Preparation/Exterior Cable Support Structure | [ICB FOR EACH CO] |
| 4) Microwave Installation | [ICB FOR EACH CO] |
| 5) Additional Charges* | [BASED ON ICB] |
| 6) Subsequent Application Fee | \$3,160.00 per request |

* Additional costs for environmental conditioning (if applicable) will be developed and charged as an ICB. These charges include but are not limited to (to the extent applicable): exterior cable support structure; coring; and roof reinforcement. These costs along with the building Modification costs will be pro-rated back to existing customers when new applicants are put into service.

Monthly recurring rates

- | | |
|------------------------------|-------------------|
| 1) Roof space (per sq. ft.)* | \$ 5.50 (interim) |
|------------------------------|-------------------|

* A minimum of 12 square feet is required per microwave arrangement. The final rate will be no less than \$4.95 and no greater than \$6.05

MICROWAVE COLLOCATION APPLICATION AGREEMENT

1. Name/Address of Central Office (s)
2. Proposed Rooftop/Exterior Space Location of Microwave Equipment
3. Description of Microwave Equipment
4. Other