

**CASE**

**NUMBER:**

99 - 422

INDEX FOR CASE: 1999-422  
BELLSOUTH TELECOMMUNICATIONS, INC.  
Amend Interconnection Agreements  
WITH CAT COMMUNICATIONS INTERNATIONAL, INC.

IN THE MATTER OF THE APPROVAL OF THE RESALE AGREEMENT  
NEGOTIATED BY BELLSOUTH TELECOMMUNICATIONS, INC. AND CAT  
COMMUNICATIONS INTERNATIONAL, INC. PURSUANT TO SECTIONS 251  
OF THE TELECOMMUNICATIONS ACT OF 1996

SEQ NBR	ENTRY DATE	REMARKS
0001	10/08/1999	Application.
0002	10/15/1999	Acknowledgement letter.
0003	11/22/1999	FINAL ORDER APPROVING NEGOTIATED AGREEMENT
M0001	12/08/1999	CREIGHTON MERSHON/BELLSOUTH-AMENDMENT TO APPLICATION
0004	01/05/2000	FINAL ORDER APPROVING AMENDMENT



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-422  
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on January 5, 2000.

Parties of Record:

Honorable Creighton E. Mershon  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
P. O. Box 32410  
Louisville, KY. 40232

CLEC Account Team  
BellSouth Telecommunications, Inc.  
9th Floor  
600 North 19th Street  
Birmingham, AL. 35203

Barbara Mason  
Cat Communications Internation, Inc.  
5650 Hollins Road  
Roanoke, VA. 34019 5056

*Stephanie J. Bell*

Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE RESALE )  
AGREEMENT NEGOTIATED BY )  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. AND CAT COMMUNICATIONS ) CASE NO. 99-422  
INTERNATIONAL, INC. PURSUANT TO )  
SECTIONS 251 AND 252 OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

O R D E R

On November 22, 1999, the Commission approved a resale agreement between BellSouth Telecommunications, Inc. ("BellSouth") and Cat Communications International, Inc. ("Cat"). On December 8, 1999, BellSouth and Cat submitted to the Commission an amendment to their resale agreement. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

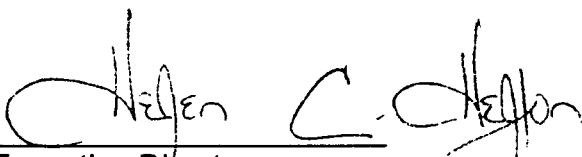
The Commission has reviewed the amendment and finds that no portion of the amendment discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this amendment is consistent with the public interest, convenience, and necessity.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS  
that the amendment is approved.

Done at Frankfort, Kentucky, this 5th day of January, 2000.

By the Commission

ATTEST:

  
\_\_\_\_\_  
Executive Director

BellSouth Telecommunications, Inc. 502 582-8219  
P. O. Box 32410 Fax 502 582-1573  
Louisville, Kentucky 40232 Internet  
or Creighton.E.Mershon@bridge.bellsouth.com  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 407  
Louisville, Kentucky 40203

Creighton E. Mershon, Sr.  
General Counsel - Kentucky

December 6, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

RECEIVED  
DEC 08 1999  
PUBLIC SERVICE  
COMMISSION


Re: Approval of the Resale Agreement Negotiated by  
BellSouth Telecommunications, Inc. ("BellSouth") and  
Cat Communications International, Inc. pursuant to  
Sections 251 and 252 of the Telecommunications Act of  
1996  
PSC 99-422

Dear Helen:

On October 8, 1999, the above-referenced Resale Agreement was filed with the Commission. The Agreement was approved on November 22, 1999. Attached for filing is the First Amendment to the Agreement.

Six copies of the Amendment and eight copies of the transmittal letter are filed. The two extra copies of the letter are provided for Amanda Hale and Becky Dotson.

Sincerely,

  
Creighton E. Mershon, Sr.

Attachment

cc: Barbara Mason, Cat Communications International, Inc.  
(letter only)

**ATTACHMENT TO TRANSMITTAL LETTER**

The Agreement entered into by and between CAT Communications International (CCI), Inc. and BellSouth Telecommunications, Inc., dated 11/02/1999, for the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee consists of the following:

ITEM	NO. PAGES
Amendment	2
TOTAL	2

FIRST AMENDMENT  
TO THE  
RESALE AGREEMENT BETWEEN  
CAT COMMUNICATIONS INTERNATIONAL, INC. and  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED SEPTEMBER 20, 1999

Pursuant to this Agreement (the "Amendment"), BellSouth Telecommunications, Inc. ("BellSouth") and Cat Communications International, Inc. ("CCI"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Resale Agreement between the Parties dated September 20, 1999 ("Resale Agreement")

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BellSouth and CCI hereby covenant and agree as follows:

1. The Parties hereby agree that the following is deleted from the fifth (5<sup>th</sup>) paragraph of the General Terms and Conditions:

**The terms and conditions contained within the General Terms and Conditions were negotiated as a whole and each term and condition within the General Terms and Conditions is interdependent upon the other terms and conditions.**

2. The Parties hereby agree that the following is deleted in its entirety from Attachment 1 – Resale:

**The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.**

3. The Parties further agree to add the following language to the second (2<sup>nd</sup>) paragraph of Section 3.1, Attachment 1 – Resale:

**All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail telecommunications services and other services specified in this Attachment.**

4. The Parties agree that all of the other provisions of the Resale Agreement shall remain in full force and effect.

5. The Parties further agree that either or both of the Parties is authorized to Submit this Amendment to the appropriate Commission or other regulatory body having Jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.



IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below:

Cat Communications International, Inc.

By: 

Name: NORMAN D. MASON

Title: PRESIDENT

Date: 10/30/99

BellSouth Telecommunications, Inc.

By: 

Name: Jerry D. Hendrix

Title: Sr. Director-Interconnection Services

Date: 11/2/99



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-422  
BELLSOUTH TELECOMMUNICATIONS, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on November 22, 1999.

Parties of Record:

Honorable Creighton E. Mershon  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
P. O. Box 32410  
Louisville, KY. 40232

CLEC Account Team  
BellSouth Telecommunications, Inc.  
9th Floor  
600 North 19th Street  
Birmingham, AL. 35203

Barbara Mason  
Cat Communications Internation, Inc.  
5650 Hollins Road  
Roanoke, VA. 34019 5056

*Stephanie J. Bell*

Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE RESALE )  
AGREEMENT NEGOTIATED BY )  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. AND CAT COMMUNICATIONS ) CASE NO. 99-422  
INTERNATIONAL, INC. PURSUANT TO )  
SECTIONS 251 AND 252 OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

O R D E R

On October 8, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and Cat Communications International, Inc. ("Cat") submitted to the Commission their negotiated agreement for resale of BellSouth's services to end-users. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

Cat must comply with all relevant Commission mandates for serving in this Commonwealth.

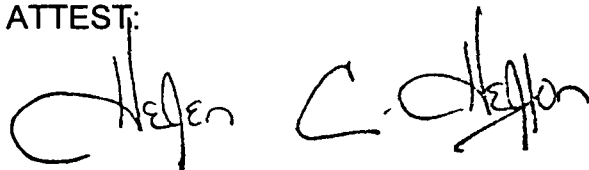
The Commission, having been otherwise sufficiently advised, HEREBY ORDERS  
that:

1. The negotiated agreement between BellSouth and Cat is approved.
2. Cat shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

Done at Frankfort, Kentucky, this 22nd day of November, 1999.

By the Commission

ATTEST:

A handwritten signature in cursive script, appearing to read "Stephen C. Shelton". The signature is written in dark ink and is positioned above a horizontal line.

Executive Director



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

October 15, 1999

Honorable Creighton E. Mershon  
General Counsel - Kentucky  
BellSouth Telecommunications, Inc.  
P. O. Box 32410  
Louisville, KY. 40232

CLEC Account Team  
BellSouth Telecommunications, Inc.  
9th Floor  
600 North 19th Street  
Birmingham, AL. 35203

Barbara Mason  
Cat Communications Internation, Inc.  
5650 Hollins Road  
Roanoke, VA. 34019 5056

RE: Case No. 99-422  
BELLSOUTH TELECOMMUNICATIONS, INC.  
(Interconnection Agreements) WITH CAT COMMUNICATIONS INTERNATIONAL

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received October 8, 1999 and has been assigned Case No. 99-422. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

*Stephanie Bell*

Stephanie Bell  
Secretary of the Commission

SB/jc

 BELL SOUTH

RECEIVED  
OCT 08 1999  
COMMUNICATIONS  
SECTION

**BellSouth Telecommunications, Inc.** 502 582-8219  
P. O. Box 32410 Fax 502 582-1573  
Louisville, Kentucky 40232 Internet  
or Creighton.E.Mershon@bridge.bellsouth.com

**Creighton E. Mershon, Sr.**  
General Counsel - Kentucky

**BellSouth Telecommunications, Inc.**  
601 West Chestnut Street, Room 407  
Louisville, Kentucky 40203

October 6, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Re: Approval of the Resale Agreement Negotiated by BellSouth  
Telecommunications, Inc. ("BellSouth") and Cat Communications  
International, Inc. pursuant to Sections 251 and 252 of the  
Telecommunications Act of 1996

CASE 99-422

Dear Helen:

Pursuant to section 252(e) of the Telecommunications Act of 1996, BellSouth and Cat Communications International, Inc. are submitting to the Kentucky Public Service Commission their negotiated agreement for the purchase of BellSouth's telecommunications services for the purpose of resale to end users by Cat Communications International, Inc.

Six copies of the agreement and eight copies of the transmittal letter are filed. The two extra copies of the letter are provided for Amanda Hale and Becky Dotson.

Please add the following to the service list for this matter: Creighton E. Mershon, Sr., BellSouth Telecommunications, Inc., P. O. Box 32410, Louisville, KY 40232; BellSouth Telecommunications, Inc., CLEC Account Team, 9th Floor, 600 N. 19th Street, Birmingham, AL 35203; and Cat Communications International, Inc., Barbara Mason, 5650 Hollins Road, Roanoke, VA 34019-5056.

Pursuant to section 252(e) of the Act, the Commission is charged with approving or rejecting the negotiated agreement between BellSouth and Cat Communications International, Inc. within 90 days of its submission. The Act provides that the Commission may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity. Both parties aver that neither of these reasons exist as to the agreement they have negotiated and therefore, are very hopeful that the Commission shall approve their agreement.

Sincerely,

  
Creighton E. Mershon, Sr.

Enclosure

cc: Barbara Mason, Cat Communications International, Inc. (letter only)

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**ATTACHMENT TO TRANSMITTAL LETTER**

The Agreement entered into by and between Cat Communications International, Inc and BellSouth Telecommunications, Inc., dated September 20, 1999 for the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee consists of the following:

ITEM	NO. PAGES
Title Page	1
Table of Contents	1
General Terms and Conditions	20
Attachment 1	35
TOTAL	57

**AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
CAT COMMUNICATIONS INTERNATIONAL, INC.**



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## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and Cat Communications International, Inc. (“CCI”), a Virginia corporation, and shall be deemed effective as of September 20, 1999. This Agreement may refer to either BellSouth or CCI or both as a “Party” or “Parties.”

## WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, CCI is an alternative local exchange telecommunications company (“CLEC”) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the Parties wish to resell BellSouth’s telecommunications services and/or interconnect their facilities, purchase network elements and other services, and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (“the Act”).

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

**The terms and conditions contained within the General Terms and Conditions were negotiated as a whole and each term and condition within the General Terms and Conditions is interdependent upon the other terms and conditions.**

**1. Purpose**

The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each Parties' obligations under sections 251 and 252 of the Act. The resale, access and interconnection obligations contained herein enable CCI to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The Parties agree that CCI will not be considered to have offered telecommunications services to the public in any state within BellSouth's region until such time as it has ordered services for resale or interconnection facilities for the purposes of providing business and/or residential local exchange service to customers.

2. **Term of the Agreement**

2.1 The term of this Agreement shall be two years, beginning September 20, 1999 and shall apply to the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. If as of the expiration of this Agreement, a Subsequent Agreement (as defined in Section 2.2 below) has not been executed by the Parties, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 2.4 below.

2.2 The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations with regard to the terms, conditions and prices of resale and/or local interconnection to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2, above, the Parties are unable to satisfactorily negotiate new resale and/or local interconnection terms, conditions and prices, either Party may petition the Commission to establish appropriate local interconnection and/or resale arrangements pursuant to 47 U.S.C. 252. The Parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate local interconnection and/or resale arrangements no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the local interconnection and/or resale arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement.

2.4 Notwithstanding the foregoing, in the event that as of the date of expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and either no arbitration proceeding has been filed in accordance with Section 2.3 above, or the Parties have not mutually agreed (where permissible) to extend the arbitration window for petitioning the applicable Commission(s) for resolution of those terms upon which the Parties have not agreed, then either Party may terminate this Agreement upon sixty (60) days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to CCI pursuant to the terms, conditions and rates set forth in BellSouth's Statement of Generally Available Terms (SGAT) to the extent an SGAT has been approved by the applicable Commission(s). If any state Commission has not approved a BellSouth SGAT, then upon BellSouth's termination of this Agreement as provided herein, BellSouth will continue to provide services to CCI

pursuant to BellSouth's then current standard interconnection agreement. In the event that the SGAT or BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement, and the terms of such Subsequent Agreement shall be effective retroactive to the day following expiration of this Agreement.

**3. Ordering Procedures**

3.1 CCI shall provide BellSouth its Carrier Identification Code (CIC), Operating Company Number (OCN), Group Access Code (GAC) and Access Customer Name and Address (ACNA) code as applicable prior to placing its first order.

3.2 The Parties agree to adhere to the BellSouth Local Interconnection and Facility Based Ordering Guide and Resale Ordering Guide, as appropriate for the services ordered.

3.3 CCI shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachment 2, 3, 5 and 7 as applicable.

**4. Parity**

When CCI purchases, pursuant to Attachment 1 of this Agreement, telecommunications services from BellSouth for the purposes of resale to end users, BellSouth shall provide said services so that the services are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its affiliates, subsidiaries and end users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to CCI shall be at least equal in quality to that which BellSouth provides to itself. The quality of the interconnection between the networks of BellSouth and the network of CCI shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by end users and service quality as perceived by CCI.

**5. White Pages Listings**

BellSouth shall provide CCI and their customers access to white pages directory listings under the following terms:

5.1 Listings. BellSouth or its agent will include CCI residential and business customer listings in the appropriate White Pages (residential and business) or

alphabetical directories. Directory listings will make no distinction between CCI and BellSouth subscribers.

- 5.2 Rates. Subscriber primary listing information in the White Pages shall be provided at no charge to CCI or its subscribers provided that CCI provides subscriber listing information to BellSouth at no charge.
- 5.3 Procedures for Submitting CCI Subscriber Information. BellSouth will provide to CCI a magnetic tape or computer disk containing the proper format for submitting subscriber listings. CCI will be required to provide BellSouth with directory listings and daily updates to those listings, including new, changed, and deleted listings, in an industry-accepted format. These procedures are detailed in BellSouth's Local Interconnection and Facility Based Ordering Guide.
- 5.4 Unlisted/Non-Published Subscribers. CCI will be required to provide to BellSouth the names, addresses and telephone numbers of all CCI customers that wish to be omitted from directories.
- 5.5 Inclusion of CCI Customers in Directory Assistance Database. BellSouth will include and maintain CCI subscriber listings in BellSouth's directory assistance databases at no charge. BellSouth and CCI will formulate appropriate procedures regarding lead time, timeliness, format and content of listing information.
- 5.6 Listing Information Confidentiality. BellSouth will accord CCI's directory listing information the same level of confidentiality that BellSouth accords its own directory listing information, and BellSouth shall limit access to CCI's customer proprietary confidential directory information to those BellSouth employees who are involved in the preparation of listings.
- 5.7 Optional Listings. Additional listings and optional listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.
- 5.8 Delivery. BellSouth or its agent shall deliver White Pages directories to CCI subscribers at no charge.

6. **Bona Fide Request/New Business Request Process for Further Unbundling**

If CCI is a facilities based provider or a facilities based and resale provider, this section shall apply. BellSouth shall, upon request of CCI, provide to CCI access to its network elements at any technically feasible point for the provision of CCI's telecommunications service where such access is necessary and failure to provide access would impair the ability of CCI to provide services that it seeks to offer. Any request by CCI for access to a network element, interconnection option, or for the provisioning of any service or product that is not already available shall be treated as a Bona Fide Request/New Business Request, and shall be submitted to BellSouth pursuant to the Bona Fide Request/New Business Request process set forth following.

- 6.1 A Bona Fide Request/New Business Request shall be submitted in writing to CCI's Account Manager by CCI and shall specifically identify the requested service date, technical requirements, space requirements and/or such specifications that clearly define the request such that BellSouth has sufficient information to analyze and prepare a response. Such a request also shall include a CCI's designation of the request as being (i) pursuant to the Telecommunications Act of 1996 or (ii) pursuant to the needs of the business.

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

To the extent technically feasible, BellSouth maintains call detail records for CCI end users for limited time periods and can respond to subpoenas and court ordered requests for this information. BellSouth shall maintain such information for CCI end users for the same length of time it maintains such information for its own end users.

- 7.1 CCI agrees that BellSouth will respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to CCI end users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request.
- 7.2 CCI agrees that in cases where CCI receives subpoenas or court ordered requests for call detail records for targeted telephone numbers belonging to CCI end users, CCI will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth. Billing for call detail information will be generated by BellSouth and directed to the law enforcement agency initiating the request.

- 7.3 In cases where the timing of the response to the law enforcement agency prohibits CCI from having the subpoena or court ordered request redirected to BellSouth by the law enforcement agency, CCI will furnish the official request to BellSouth for providing the call detail information. BellSouth will provide the call detail records to CCI and bill CCI for the information. CCI agrees to reimburse BellSouth for the call detail information provided.
- 7.4 CCI will provide CCI end user and/or other customer information that is available to CCI in response to subpoenas and court orders for their own customer records. BellSouth will redirect subpoenas and court ordered requests for CCI end user and/or other customer information to CCI for the purpose of providing this information to the law enforcement agency.

8. **Liability and Indemnification**

- 8.1 **BellSouth Liability.** BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible CCI revenues.
- 8.2 **CCI Liability.** In the event that CCI consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of CCI under this Agreement.
- 8.3 **Liability for Acts or Omissions of Third Parties.** Neither BellSouth nor CCI shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.
- 8.4 **Limitation of Liability.**
- 8.4.1 Each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorney's fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.
- 8.4.2 **Limitations in Tariffs.** A Party may, in its sole discretion, provide in its tariffs and contracts with its Customer and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to Customer or third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) Consequential Damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the

other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such Loss.

- 8.4.3 Neither BellSouth nor CCI shall be liable for damages to the other's terminal location, POI or other company's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a company's negligence or willful misconduct or by a company's failure to properly ground a local loop after disconnection.
- 8.4.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 8.5 Indemnification for Certain Claims. The Party providing services hereunder, its affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any claim, loss or damage claimed by the customer of the Party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.
- 8.6 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.
9. Intellectual Property Rights and Indemnification



- 9.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. CCI is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any BellSouth name, service mark or trademark.
- 9.2 Ownership of Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.
- 9.3 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 8 of this Agreement.
- 9.4 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense, but subject to the limitations of liability set forth below:
- 9.4.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 9.4.2 obtain a license sufficient to allow such use to continue.
- 9.4.3 In the event 9.4.1 or 9.4.2 are commercially unreasonable, then said Party may, terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 9.5 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of

the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

- 9.6 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

10. **Treatment of Proprietary and Confidential Information**

- 10.1 Confidential Information. It may be necessary for BellSouth and CCI to provide each other with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). All Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. The Information shall not be copied or reproduced in any form. BellSouth and CCI shall receive such Information and not disclose such Information. BellSouth and CCI shall protect the Information received from distribution, disclosure or dissemination to anyone except employees of BellSouth and CCI with a need to know such Information and which employees agree to be bound by the terms of this Section. BellSouth and CCI will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

- 10.2 Exception to Obligation. Notwithstanding the foregoing, there will be no obligation on BellSouth or CCI to protect any portion of the Information that is: (1) made publicly available by the owner of the Information or lawfully disclosed by a Party other than BellSouth or CCI; (2) lawfully obtained from any source other than the owner of the Information; or (3) previously known to the receiving Party without an obligation to keep it confidential.

**11. Assignments**

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate company of the Party without the consent of the other Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

**12. 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, either Party may petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

**13. Taxes**

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

13.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

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

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

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

- 13.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 13.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 13.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 13.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 13.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 13.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 13.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

- 13.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.
- 13.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 13.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 13.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 13.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 13.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 13.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 13.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in

no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

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

14. Force Majeure

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

15. Year 2000 Compliance

Each Party warrants that it has implemented a program the goal of which is to ensure that all 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 multicentury formulas and date values, and date data interface values that reflect the century.

16. Modification of Agreement

- 16.1 BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to CCI any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning

such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

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

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

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

16.5 In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of CCI or BellSouth to perform any material terms of this Agreement, CCI or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section 12.

16.6 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

17. **Waivers**

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

to insist upon the specific performance of any and all of the provisions of this Agreement.

**18. 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.

**19. Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

**20. Notices**

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

**BellSouth Telecommunications, Inc.**

CLEC Account Team  
9<sup>th</sup> Floor  
600 North 19<sup>th</sup> Street  
Birmingham, Alabama 35203

and

General Attorney - COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**CCI**

Barbara Mason  
5650 Hollins Road  
Roanoke, VA 24019-5056

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

20.2 Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on



the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

- 20.3 BellSouth shall provide CCI notice via Internet posting of price changes and of changes to the terms and conditions of services available for resale.

**21. Rule of Construction**

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

**22. Headings of No Force or Effect**

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

**23. Multiple Counterparts**

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

**24. Implementation of Agreement**

If CCI is a facilities based provider or a facilities based and resale provider, this section shall apply. Within 60 days of the execution of this Agreement, the Parties will adopt a schedule for the implementation of the Agreement. The schedule shall state with specificity time frames for submission of including but not limited to, network design, interconnection points, collocation arrangement requests, pre-sales testing and full operational time frames for the business and residential markets. An implementation template to be used for the implementation schedule is contained in Attachment 10 of this Agreement.

**25. 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, CCI shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by CCI.

**26. Entire Agreement**

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior Agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

**This Agreement may include attachments with provisions for the following services:**

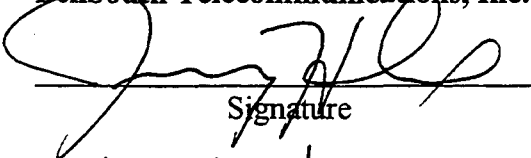
Network Elements and Other Services  
Local Interconnection  
Resale  
Collocation

**The following services are included as options for purchase by CCI. CCI shall elect said services by written request to its Account Manager if applicable.**

Optional Daily Usage File (ODUF)  
Enhanced Optional Daily Usage File (EODUF)  
Access Daily Usage File (ADUF)  
Line Information Database (LIDB) Storage  
Centralized Message Distribution Service (CMDS)  
Calling Name (CNAM)

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

**BellSouth Telecommunications, Inc.**

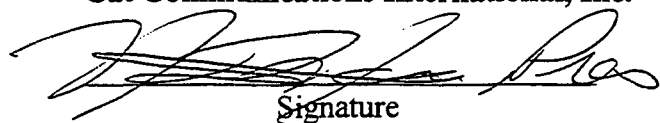
  
\_\_\_\_\_  
Signature

Jerry D. Hendry  
\_\_\_\_\_  
Name

Sr. Director  
\_\_\_\_\_  
Title

9/20/99  
\_\_\_\_\_  
Date

**Cat Communications International, Inc.**

  
\_\_\_\_\_  
Signature

NORMAN D. MASON  
\_\_\_\_\_  
Name

PRESIDENT  
\_\_\_\_\_  
Title

Sept 10, 1999  
\_\_\_\_\_  
Date

## Definitions

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

**Centralized Message Distribution System** is the Telcordia (formerly BellCore) administered national system, based in Kansas City, Missouri, used to exchange Exchange Message Interface (EMI) formatted data among host companies.

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

**Daily Usage File** is the compilation of messages or copies of messages in standard Exchange Message Interface (EMI) format exchanged from BellSouth to an CLEC.

**Exchange Message Interface** is the nationally administered standard format for the exchange of data among the Exchange Carriers within the telecommunications industry.

**Information Service** means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

**Intercompany Settlements (ICS)** is the revenue associated with charges billed by a company other than the company in whose service area such charges were incurred. ICS on a national level includes third number and credit card calls and is administered by Telcordia (formerly BellCore)'s Calling Card and Third Number Settlement System (CATS). Included is traffic that originates in one Regional Bell Operating Company's (RBOC) territory and bills in another RBOC's territory.

**Intermediary function** is defined as the delivery of traffic from CCI; a CLEC other than CCI or another telecommunications carrier through the network of BellSouth or CCI to an end user of CCI; a CLEC other than CCI or another telecommunications carrier.

**Local Interconnection** is defined as 1) the delivery of local traffic to be terminated on each Party's local network so that end users of either Party have the ability to reach end users of the other Party without the use of any access code or substantial delay in the processing of the call; 2) the LEC network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

**Local Traffic** is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. As clarification of this definition and for reciprocal compensation, Local Traffic does not include traffic that originates from or terminates to or through an enhanced service provider or information service provider. As further clarification, Local Traffic does not include calls that do not transmit information of the user's choosing. In any event, neither Party will pay reciprocal compensation to the other if the "traffic" to which such reciprocal compensation would otherwise apply was generated, in whole or in part, for the purpose of creating an obligation on the part of the originating carrier to pay reciprocal compensation for such traffic.

**Message Distribution** is routing determination and subsequent delivery of message data from one company to another. Also included is the interface function with CMDS, where appropriate.

**Multiple Exchange Carrier Access Billing ("MECAB")** means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Telcordia (formerly BellCore) as Special Report SR-BDS-000983, Containing the recommended guidelines for the billing of Exchange Service access provided by two or more LECs and/or CLECs or by one LEC in two or more states within a single LATA.

**Network Element** is defined to mean a facility or equipment used in the provision of a telecommunications service. Such term may include, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. BellSouth offers access to the Network Elements, unbundled loops; network interface device; sub-loop elements; local switching; transport; tandem switching; operator systems; signaling; access to call-related databases; dark fiber as set forth in Attachment 2 of this Agreement.

**Non-Intercompany Settlement System (NICS)** is the Telcordia (formerly BellCore) system that calculates non-intercompany settlements amounts due from one company to another within the same RBOC region. It includes credit card, third number and collect messages.

**Percent of Interstate Usage (PIU)** is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "non-intermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "non-intermediary", local, interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating Party pays services.

**Percent Local Usage (PLU)** is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all “non-intermediary” local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating Party pays minutes of use.

**Revenue Accounting Office (RAO) Status Company** is a local exchange company/alternate local exchange company that has been assigned a unique RAO code. Message data exchanged among RAO status companies is grouped (i.e. packed) according to From/To/Bill RAO combinations.

**Service Control Points (“SCPs”)** are defined as databases that store information and have the ability to manipulate data required to offer particular services.

**Signal Transfer Points (“STPs”)** are signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases. STPs enable the exchange of Signaling System 7 (“SS7”) messages between switching elements, database elements and STPs. STPs provide access to various BellSouth and third party network elements such as local switching and databases.

**Signaling links** are dedicated transmission paths carrying signaling messages between carrier switches and signaling networks. Signal Link Transport is a set of two or four dedicated 56 kbps transmission paths between CCI designated Signaling Points of Interconnection that provide a diverse transmission path and cross connect to a BellSouth Signal Transfer Point.

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

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

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

**Attachment 1**

**Resale**

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## RESALE

**The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.**

### 1 Discount Rates

The rates pursuant by which CCI is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

### 2 Definition of Terms

- 2.1 CUSTOMER OF RECORD means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.
- 2.2 DEPOSIT means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by BellSouth.
- 2.3 END USER means the ultimate user of the telecommunications services.
- 2.4 END USER CUSTOMER LOCATION means the physical location of the premises where an end user makes use of the telecommunications services.
- 2.5 NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
- 2.6 OTHER/COMPETITIVE LOCAL EXCHANGE COMPANY (OLEC/CLEC) means a telephone company certificated by the public service commissions of BellSouth's franchised area to provide local exchange service within BellSouth's franchised area.
- 2.7 RESALE means an activity wherein a certificated CLEC, such as CCI subscribes to the telecommunications services of BellSouth and then reoffers those telecommunications services to the public (with or without "adding value").
- 2.8 RESALE SERVICE AREA means the area, as defined in a public service commission approved certificate of operation, within which an CLEC, such as CCI, may offer resold local exchange telecommunications service.



3 **General Provisions**

- 3.1 CCI may resell the tariffed local exchange and toll telecommunications services of BellSouth contained in the General Subscriber Service Tariff and Private Line Service Tariff subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the exclusions and limitations on services available for resale will be as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

BellSouth shall make available telecommunications services for resale at the rates set forth in Exhibit A to this Agreement and subject to the exclusions and limitations set forth in Exhibit B to this Agreement. BellSouth does not however waive its rights to appeal or otherwise challenge any decision regarding resale that resulted in the discount rates contained in Exhibit A or the exclusions and limitations contained in Exhibit B. BellSouth reserves the right to pursue any and all legal and/or equitable remedies, including appeals of any decisions. If such appeals or challenges result in changes in the discount rates or exclusions and limitations, the parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with the outcome of the appeal.

- 3.2 CCI may purchase resale services from BellSouth for their own use in operating their business. The resale discount will apply to those services under the following conditions:
- 3.2.1 CCI must resell services to other end users.
- 3.2.2 CCI must order services through resale interfaces, i. e., the Local Carrier Service Center (LCSC) and/or appropriate Resale Account Teams pursuant to Section 3 of the General Terms and Conditions.
- 3.2.3 CCI cannot be an alternative local exchange telecommunications company for the single purpose of selling to themselves.
- 3.3 The provision of services by BellSouth to CCI does not constitute a joint undertaking for the furnishing of any service.
- 3.4 CCI will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and expect payment from CCI for all services.
- 3.5 CCI will be BellSouth's single point of contact for all services purchased pursuant to this Agreement. BellSouth shall have no contact with the end user except to the extent provided for herein.
- 3.6 BellSouth will continue to bill the end user for any services that the end user specifies it wishes to receive directly from BellSouth.
- 3.7 BellSouth maintains the right to serve directly any end user within the service area of CCI. BellSouth will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of CCI.
- 3.8 Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
- 3.9 Current telephone numbers may normally be retained by the end user. However, telephone numbers are the property of BellSouth and are assigned to the service furnished. CCI has no

property right to the telephone number or any other call number designation associated with services furnished by BellSouth, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BellSouth deems it necessary to do so in the conduct of its business.

- 3.10 For the purpose of the resale of BellSouth's telecommunications services by CCI, BellSouth will provide CCI with an on line access to telephone numbers for reservation on a first come first serve basis. Such reservations of telephone numbers, on a pre-ordering basis shall be for a period of nine (9) days. CCI acknowledges that there may be instances where there is a shortage of telephone numbers in a particular Common Language Location Identifier Code (CLLIC) and in such instances BellSouth may request that CCI cancel its reservations of numbers. CCI shall comply with such request.

Further, upon CCI's request, and for the purpose of the resale of BellSouth's telecommunications services by CCI, BellSouth will reserve up to 100 telephone numbers per CLLIC, for CCI's sole use. Such telephone number reservations shall be valid for ninety (90) days from the reservation date. CCI acknowledges that there may be instances where there is a shortage of telephone numbers in a particular CLLIC and in such instances BellSouth shall use its best efforts to reserve for a ninety (90) day period a sufficient quantity of CCI's reasonable need in that particular CLLIC.

- 3.11 BellSouth may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to CCI.
- 3.12 Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- 3.13 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- 3.14 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.
- 3.15 BellSouth accepts no responsibility to any person for any unlawful act committed by CCI or its end users as part of providing service to CCI for purposes of resale or otherwise.
- 3.16 BellSouth will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with BellSouth's end users. Law enforcement agency subpoenas and court orders regarding end users of CCI will be directed to CCI. BellSouth will bill CCI for implementing any requests by law enforcement agencies regarding CCI end users.
- 3.17 The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than BellSouth shall not:
- 3.17.1 Interfere with or impair service over any facilities of BellSouth, its affiliates, or its connecting and concurring carriers involved in its service;
  - 3.17.2 Cause damage to BellSouth's plant;
  - 3.17.3 Impair the privacy of any communications; or
  - 3.17.4 Create hazards to any BellSouth employees or the public.

- 3.18 CCI assumes the responsibility of notifying BellSouth regarding less than standard operations with respect to services provided by CCI.
- 3.19 Facilities and/or equipment utilized by BellSouth to provide service to CCI remain the property of BellSouth.
- 3.20 White page directory listings will be provided in accordance with regulations set forth in Section A6 of the General Subscriber Services Tariff and will be available for resale.
- 3.21 BellSouth provides electronic access to customer record information. Access is provided through the Local Exchange Navigation System (LENS) and the Telecommunications Access Gateway (TAG). Customer Record Information includes but is not limited to, customer specific information in CRIS and RSAG. CCI agrees not to view, copy, or otherwise obtain access to the customer record information of any customer without that customer's permission, and further agrees that CCI will obtain access to customer record information only in strict compliance with applicable laws, rules, or regulations of the State in which the service is provided.
- 3.22 All costs incurred by BellSouth to develop and implement operational interfaces shall be recovered from Resellers who utilize the services. Charges for use of Operational Support Systems (OSS) shall be as set forth in Exhibit A of this attachment.
- 3.23 Where available to BellSouth's end users, BellSouth shall provide the following telecommunications services at a discount to allow for voice mail services:
- Simplified Message Desk Interface - Enhanced ("SMDI-E")
  - Simplified Message Desk Interface ("SMDI") Message Waiting Indicator ("MWT") stutter dialtone and message waiting light feature capabilities
  - Call Forward on Busy/Don't Answer ("CF-B/DA")
  - Call Forward on Busy ("CF/B")
  - Call Forward Don't Answer ("CF/DA")
- Further, BellSouth messaging services set forth in BellSouth's Messaging Service Information Package shall be made available for resale without the wholesale discount.
- 3.24 BellSouth's Inside Wire Maintenance Service Plans may be made available for resale at rates, terms and conditions as set forth by BellSouth and without the wholesale discount.
- 3.25 All costs incurred by BellSouth for providing services requested by CCI that are not covered in the BellSouth tariffs shall be recovered from the CCI(s) who utilize those services.
- 3.26 Recovery of charges associated with implementing Number Portability through monthly charges assessed to end users has been authorized by the FCC. This end user line charge will be billed to Resellers of BellSouth's telecommunications services and will be as filed in FCC No. 1. This charge will not be discounted.

4 **BellSouth's Provision of Services to CCI**

- 4.1 CCI agrees that its resale of BellSouth services shall be as follows:
- 4.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.
  - 4.1.2 Hotel and Hospital PBX services are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Independent Payphone Provider (IPP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's A23 Shared Tenant Service Tariff in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
  - 4.1.3 BellSouth reserves the right to periodically audit services purchased by CCI to establish authenticity of use. Such audit shall not occur more than once in a calendar year. CCI shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit.
- 4.2 Resold services can only be used in the same manner as specified in BellSouth's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services.
- 4.3 CCI may resell services only within the specific resale service area as defined in its certificate.
- 4.4 Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

## 5 Maintenance of Services

- 5.1 CCI will adopt and adhere to the standards contained in the applicable CLEC Work Center Operational Understanding Agreement regarding maintenance and installation of service.
- 5.2 Services resold under BellSouth's Tariffs and facilities and equipment provided by BellSouth shall be maintained by BellSouth.
- 5.3 CCI or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth, other than by connection or disconnection to any interface means used, except with the written consent of BellSouth.
- 5.4 CCI accepts responsibility to notify BellSouth of situations that arise that may result in a service problem.
- 5.5 CCI will be BellSouth's single point of contact for all repair calls on behalf of CCI's end users. The parties agree to provide one another with toll-free contact numbers for such purposes.
- 5.6 CCI will contact the appropriate repair centers in accordance with procedures established by BellSouth.

- 5.7 For all repair requests, CCI accepts responsibility for adhering to BellSouth's prescreening guidelines prior to referring the trouble to BellSouth.
- 5.8 BellSouth will bill CCI for handling troubles that are found not to be in BellSouth's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.
- 5.9 BellSouth reserves the right to contact CCI's end users, if deemed necessary, for maintenance purposes.

## 6 Establishment of Service

- 6.1 After receiving certification as a local exchange company from the appropriate regulatory agency, CCI will provide the appropriate BellSouth service center the necessary documentation to enable BellSouth to establish a master account for CCI's resold services. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable. When necessary deposit requirements are met, BellSouth will begin taking orders for the resale of service.
- 6.2 Service orders will be in a standard format designated by BellSouth.
- 6.3 When notification is received from CCI that a current end user of BellSouth will subscribe to CCI's service, standard service order intervals for the appropriate class of service will apply.
- 6.4 BellSouth will not require end user confirmation prior to establishing service for CCI's end user customer. CCI must, however, be able to demonstrate end user authorization upon request.
- 6.5 CCI will be the single point of contact with BellSouth for all subsequent ordering activity resulting in additions or changes to resold services except that BellSouth will accept a request directly from the end user for conversion of the end user's service from CCI to BellSouth or will accept a request from another CLEC for conversion of the end user's service from CCI to the other LEC. BellSouth will notify CCI that such a request has been processed.
- 6.6 If BellSouth determines that an unauthorized change in local service to CCI has occurred, BellSouth will reestablish service with the appropriate local service provider and will assess CCI as the CLEC initiating the unauthorized change, the unauthorized change charge described in F.C.C. Tariff No. 1, Section 13 or applicable state tariff. Appropriate nonrecurring charges, as set forth in Section A4. of the General Subscriber Service Tariff, will also be assessed to CCI. These charges can be adjusted if CCI provides satisfactory proof of authorization.
- 6.7 In order to safeguard its interest, BellSouth reserves the right to secure the account with a suitable form of security deposit, unless satisfactory credit has already been established.
  - 6.7.1 Such security deposit shall take the form of an irrevocable Letter of Credit or other forms of security acceptable to BellSouth. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.
  - 6.7.2 If a security deposit is required, such security deposit shall be made prior to the inauguration of service.

- 6.7.3 Such security deposit may not exceed two months' estimated billing.
- 6.7.4 The fact that a security deposit has been made in no way relieves CCI from complying with BellSouth's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of BellSouth providing for the discontinuance of service for non-payment of any sums due BellSouth.
- 6.7.5 BellSouth reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit.
- 6.7.6 In the event that CCI defaults on its account, service to CCI will be terminated and any security deposits held will be applied to its account.
- 6.7.7 Interest on a security deposit shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff.

## 7 Payment And Billing Arrangements

- 7.1 Prior to submitting orders to BellSouth for local service, a master account must be established for CCI. The CCI is required to provide the following before a master account is established: proof of PSC/PUC certification, the Application for Master Account, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable.
- 7.2 BellSouth shall bill CCI on a current basis all applicable charges and credits.
- 7.3 Payment of all charges will be the responsibility of CCI. CCI shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by CCI from CCI's end user. BellSouth will not become involved in billing disputes that may arise between CCI and its end user. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.
- 7.4 BellSouth will render bills each month on established bill days for each of CCI's accounts.
- 7.5 BellSouth will bill CCI in advance charges for all services to be provided during the ensuing billing period except charges associated with service usage, which will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill CCI, and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, telecommunications relay charges (TRS), and franchise fees.
- 7.6 The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by BellSouth.
  - 7.6.1 If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received

by the payment due date, a late payment penalty, as set forth in section 7.8 following, shall apply.

7.6.2 If CCI requests multiple billing media or additional copies of bills, BellSouth will provide these at an appropriate charge to CCI.

7.6.3 Billing Disputes

7.6.3.1 Each Party agrees to notify the other Party upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear. Resolution of the dispute is expected to occur at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the issues are not resolved within the allotted time frame, the following resolution procedure will begin:

7.6.3.2 If the dispute is not resolved within sixty (60) days of the Bill Date, the dispute will be escalated to the second level of management for each of the respective Parties for resolution. If the dispute is not resolved within ninety (90) days of the Bill Date, the dispute will be escalated to the third level of management for each of the respective Parties for resolution

7.6.3.3 If the dispute is not resolved within one hundred and twenty (120) days of the Bill Date, the dispute will be escalated to the fourth level of management for each of the respective Parties for resolution.

7.6.3.4 If a Party disputes a charge and does not pay such charge by the payment due date, such charges shall be subject to late payment charges as set forth in the Late Payment Charges provision of this Attachment. If a Party disputes charges and the dispute is resolved in favor of such Party, the other Party shall credit the bill of the disputing Party for the amount of the disputed charges along with any late payment charges assessed no later than the second Bill Date after the resolution of the dispute. Accordingly, if a Party disputes charges and the dispute is resolved in favor of the other Party, the disputing Party shall pay the other Party the amount of the disputed charges and any associated late payment charges assessed no later than the second bill payment due date after the resolution of the dispute. BellSouth shall only assess interest on previously assessed late payment charges in a state where it has authority pursuant to its tariffs.

7.7 Upon proof of tax exempt certification from CCI, the total amount billed to CCI will not include any taxes due from the end user to reflect the tax exempt certification and local tax laws. CCI will be solely responsible for the computation, tracking, reporting, and payment of taxes applicable to CCI's end user.

7.8 If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor and will be applied on a per bill basis. The late factor shall be as set forth in

Section A2 of the General Subscriber Services Tariff and Section B2 of the Private Line Service Tariff.

- 7.9 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, BellSouth. No additional charges are to be assessed to CCI
- 7.10 BellSouth will not perform billing and collection services for CCI as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.
- 7.11 Pursuant to 47 CFR Section 51.617, BellSouth will bill CCI end user common line charges identical to the end user common line charges BellSouth bills its end users.
- 7.12 In general, BellSouth will not become involved in disputes between CCI and CCI's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of BellSouth, CCI shall contact the designated Service Center for resolution. BellSouth will make every effort to assist in the resolution of the dispute and will work with CCI to resolve the matter in as timely a manner as possible. CCI may be required to submit documentation to substantiate the claim.

## 8 Discontinuance of Service

- 8.1 The procedures for discontinuing service to an end user are as follows:
  - 8.1.1 Where possible, BellSouth will deny service to CCI's end user on behalf of, and at the request of, CCI. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of CCI.
  - 8.1.2 At the request of CCI, BellSouth will disconnect a CCI end user customer.
  - 8.1.3 All requests by CCI for denial or disconnection of an end user for nonpayment must be in writing.
  - 8.1.4 CCI will be made solely responsible for notifying the end user of the proposed disconnection of the service.
  - 8.1.5 BellSouth will continue to process calls made to the Annoyance Call Center and will advise CCI when it is determined that annoyance calls are originated from one of their end user's locations. BellSouth shall be indemnified, defended and held harmless by CCI and/or the end user against any claim, loss or damage arising from providing this information to CCI. It is the responsibility of CCI to take the corrective action necessary with its end users who make annoying calls. Failure to do so will result in BellSouth's disconnecting the end user's service.
  - 8.1.6 BellSouth may disconnect and reuse facilities when the facility is in a denied state and BellSouth has received an order to establish new service or transfer of service from an end user or an end user's CLEC at the same address served by the denied facility.
- 8.2 The procedures for discontinuing service to CCI are as follows:



- 8.2.1 BellSouth reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by CCI of the rules and regulations of BellSouth's Tariffs.
- 8.2.2 If payment of account is not received by the bill day in the month after the original bill day, BellSouth may provide written notice to CCI, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition BellSouth may, at the same time, give thirty days notice to the person designated by CCI to receive notices of noncompliance, and discontinue the provision of existing services to CCI at any time thereafter.
- 8.2.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.
- 8.2.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and CCI's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to CCI without further notice.
- 8.2.5 If payment is not received or arrangements made for payment by the date given in the written notification, CCI's services will be discontinued. Upon discontinuance of service on a CCI's account, service to CCI's end users will be denied. BellSouth will also reestablish service at the request of the end user or CCI upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures. CCI is solely responsible for notifying the end user of the proposed disconnection of the service.
- 8.2.6 If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

**9 Line Information Database (LIDB)**

- 9.1 BellSouth will store in its Line Information Database (LIDB) records relating to service only in the BellSouth region. The LIDB Storage Agreement is included in this Attachment as Exhibit C.
- 9.2 BellSouth will provide LIDB Storage upon written request to CCI Account Manager stating requested activation date.

**10 RAO Hosting**

- 10.1 The RAO Hosting Agreement is included in this Attachment as Exhibit D. Rates for BellSouth's Centralized Message Distribution System (CMDS) are as set forth in Exhibit H of this Attachment.
- 10.2 BellSouth will provide RAO Hosting upon written request to its Account Manager stating requested activation date.

**11 Optional Daily Usage File (ODUF)**

- 11.1 The Optional Daily Usage File (ODUF) Agreement with terms and conditions is included in this Attachment as Exhibit E. Rates for ODUF are as set forth in Exhibit H of this Attachment.

11.2 BellSouth will provide Optional Daily Usage File (ODUF) service upon written request to its Account Manager stating requested activation date.

**12 Enhanced Optional Daily Usage File (EODUF)**

12.1 The Enhanced Optional Daily Usage File (EODUF) service Agreement with terms and conditions is included in this Attachment as Exhibit F. Rates for EODUF are as set forth in Exhibit H of this Attachment.

12.2 BellSouth will provide Enhanced Optional Daily Usage File (EODUF) service upon written request to its Account Manager stating requested activation date.

**13 Calling Name Delivery (CNAM) Database Service**

13.1 Calling Name Delivery (CNAM) Database Service Agreement is included in this Attachment as Exhibit G. Rates for CNAM are as set forth in Exhibit H of this Attachment.

13.2 BellSouth will provide Calling Name Delivery (CNAM) Database service upon written request to its Account Manager stating requested activation date.

## EXHIBIT A

## APPLICABLE DISCOUNTS

The telecommunications services available for purchase by CCI for the purposes of resale to CCI end users shall be available at the following discount off of the retail rate.

## DISCOUNT\*

STATE	RESIDENCE	BUSINESS	CSAs***
ALABAMA	16.3%	16.3%	
FLORIDA	21.83%	16.81%	
GEORGIA	20.3%	17.3%	
KENTUCKY	16.79%	15.54%	
LOUISIANA	20.72%	20.72%	9.05%
MISSISSIPPI	15.75%	15.75%	
NORTH CAROLINA	21.5%	17.6%	
SOUTH CAROLINA	14.8%	14.8%	8.98%
TENNESSEE**	16%	16%	

- \* When a CLEC provides Resale service in a cross boundary area (areas that are part of the local serving area of another state's exchange) the rates, regulations and discounts for the tariffing state will apply. Billing will be from the serving state.
- \*\* In Tennessee, if CLEC provides its own operator services and directory services, the discount shall be 21.56%. CLEC must provide written notification to BellSouth within 30 days prior to providing its own operator services and directory services to qualify for the higher discount rate of 21.56%.
- \*\*\* Unless noted in this column, the discount for Business will be the applicable discount rate for CSAs.

**OPERATIONAL SUPPORT SYSTEMS (OSS) RATES**

BellSouth has developed and made available the following mechanized systems by which CCI may submit LSRs electronically.

LENS	Local Exchange Navigation System
EDI	Electronic Data Interface
EDI-PC	Electronic Data Interface – Personal Computer
TAG	Telecommunications Access Gateway

LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic ordering charge as specified in the Table below. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). LSRs submitted by means other than one of these interactive interfaces (mail, fax, courier, etc.) will incur a manual order charge as specified in the table below:

<b>OPERATIONAL SUPPORT SYSTEMS (OSS) RATES</b>	<b><u>Electronic</u> Per LSR received from the CLEC by one of the OSS interactive interfaces</b>	<b><u>Manual</u> Per LSR received from the CLEC by means other than one of the OSS interactive interfaces</b>
<b>OSS LSR Charge</b>	<b>\$3.50</b>	<b>\$19.99</b>
<b>USOC</b>	<b>SOMECH</b>	<b>SOMAN</b>

Note: In addition to the OSS charges, applicable discounted service order and related discounted charges apply per the tariff.

**DENIAL/RESTORAL OSS CHARGE**

In the event CCI provides a list of customers to be denied and restored, rather than an LSR, each location on the list will require a separate PON and, therefore will be billed as one LSR per location.

**CANCELLATION OSS CHARGE**

CCI will incur an OSS charge for an accepted LSR that is later canceled by CCI.

Note: Supplements or clarifications to a previously billed LSR will not incur another OSS charge.

**THRESHOLD BILLING PLAN**

The Parties agree that CCI will incur the mechanized rate for all LSRs, both mechanized and manual, if the percentage of mechanized LSRs to total LSRs meets or exceeds the threshold percentages shown below:

Year	Ratio: Mechanized/Total LSRs
1999	70%
2000	80%
2001	90%

The threshold plan will be discontinued in 2002.

BellSouth will track the total LSR volume for each CLEC for each quarter. At the end of that time period, a Percent Electronic LSR calculation will be made for that quarter based on the LSR data tracked in the LCSC. If this

percentage exceeds the threshold volume, all of that CLECs' future manual LSRs will be billed at the mechanized LSR rate. To allow time for obtaining and analyzing the data and updating the billing system, this billing change will take place on the first day of the second month following the end of the quarter (e.g. May 1 for 1Q, Aug 1 for 2Q, etc.). There will be no adjustments to the amount billed for previously billed LSRs.

The Parties agree that any charges BellSouth is unable to bill on April 15, 1999 will be trued up on or about July 1, 1999.

**EXCLUSIONS AND LIMITATIONS  
ON SERVICES AVAILABLE FOR RESALE**

	Type of Service	AL		FL		GA		KY		LA	
		Resale?	Discount?	Resale?	Discount?	Resale?	Discount?	Resale?	Discount?	Resale?	Discount?
1	Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Contract Service Arrangements	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Promotions - > 90 Days(Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	Promotions - < 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	No	No	Yes	No
5	Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	Note 4	Note 4	Yes	Yes
6	911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
7	N11 Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
8	AdWatch <sup>SM</sup> Svc (See Note 6)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	MemoryCall <sup>®</sup> Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10	Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
11	Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12	Non-Recurring Charges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
13	End User Line Charge – Number Portability	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

	Type of Service	MS		NC		SC		TN	
		Resale?	Discount?	Resale?	Discount?	Resale?	Discount?	Resale?	Discount?
1	Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Contract Service Arrangements	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Promotions - > 90 Days(Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Note 3
4	Promotions - < 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	No	No
5	Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Note 4
6	911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	N11 Services	No	No	No	No	Yes	Yes	Yes	Yes
8	AdWatch <sup>SM</sup> Svc (See Note 6)	Yes	No	Yes	No	Yes	No	Yes	No
9	MemoryCall <sup>®</sup> Service	Yes	No	Yes	No	Yes	No	Yes	No
10	Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No
11	Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No
12	Non-Recurring Charges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
13	End User Line Charge – Number Portability	Yes	No	Yes	No	Yes	No	Yes	No

**Applicable Notes:**

- 1 Grandfathered services can be resold only to existing subscribers of the grandfathered service.
- 2 Where available for resale, promotions will be made available only to end users who would have qualified for the promotion had it been provided by BellSouth directly.
- 3 In Tennessee, long-term promotions (offered for more than ninety (90) days) may be obtained at one of the following rates:
  - (a) the stated tariff rate, less the wholesale discount;
  - (b) the promotional rate (the promotional rate offered by BellSouth will not be discounted further by the wholesale discount rate)

**EXHIBIT B**  
**Page 2 of 2**

4. **Lifeline/Link Up** services may be offered only to those subscribers who meet the criteria that BellSouth currently applies to subscribers of these services. In Kentucky, the CCI is responsible for funding its own Lifeline and Link Up benefit. In Tennessee, CCI shall purchase BellSouth's Message Rate Service at the stated tariff rate, less the wholesale discount. CCI must further discount the wholesale Message Rate Service to Lifeline customers with a discount which is no less than the minimum discount that BellSouth now provides. CCI is responsible for recovering the Subscriber Line Charge from the National Exchange Carriers Association interstate toll settlement pool just as BellSouth does today. The maximum rate that CCI may charge for Lifeline Service shall be capped at the flat retail rate offered by BellSouth.
- 5 Some of BellSouth's local exchange and toll telecommunications services are not available in certain central offices and areas.
- 6 AdWatch<sup>SM</sup> Service is tariffed as BellSouth<sup>®</sup> AIN Virtual Number Call Detail Service.

## LINE INFORMATION DATA BASE (LIDB) STORAGE AGREEMENT

### I. SCOPE

A. This Agreement sets forth the terms and conditions pursuant to which BST agrees to store in its LIDB certain information at the request of the Local Exchange Company and pursuant to which BST, its LIDB customers and Local Exchange Carrier shall have access to such information. Local Exchange Carrier understands that BST provides access to information in its LIDB to various telecommunications service providers pursuant to applicable tariffs and agrees that information stored at the request of Local Exchange Carrier, pursuant to this Agreement, shall be available to those telecommunications service providers. The terms and conditions contained in the attached Addendum(s) are hereby made a part of this Agreement as if fully incorporated herein.

B. LIDB is accessed for the following purposes:

1. Billed Number Screening
2. Calling Card Validation
3. Fraud Control

C. BST will provide seven days per week, 24-hours per day, fraud monitoring on Calling Cards, bill-to-third and collect calls made to numbers in BST's LIDB, provided that such information is included in the LIDB query. BST will establish fraud alert thresholds and will notify the Local Exchange Company of fraud alerts so that the Local Exchange Company may take action it deems appropriate. Local Exchange Company understands and agrees BST will administer all data stored in the LIDB, including the data provided by Local Exchange Company pursuant to this Agreement, in the same manner as BST's data for BST's end user customers. BST shall not be responsible to Local Exchange Company for any lost revenue which may result from BST's administration of the LIDB pursuant to its established practices and procedures as they exist and as they may be changed by BST in its sole discretion from time to time.



Local Exchange Company understands that BST currently has in effect numerous billing and collection agreements with various interexchange carriers and billing clearing houses. Local Exchange Company further understands that these billing and collection customers of BST query BST's LIDB to determine whether to accept various billing options from end users. Additionally, Local Exchange Company understands that presently BST has no method to differentiate between BST's own billing and line data in the LIDB and such data which it includes in the LIDB on Local Exchange Company's behalf pursuant to this Agreement. Therefore, until such time as BST can and does implement in its LIDB and its supporting systems the means to differentiate Local Exchange Company's data from BST's data and the parties to this Agreement execute appropriate amendments hereto, the following terms and conditions shall apply:

- (a) The Local Exchange Company agrees that it will accept responsibility for telecommunications services billed by BST for its billing and collection customers for Local Exchange Customer's end user accounts which are resident in LIDB pursuant to this Agreement. Local Exchange Company authorizes BST to place such charges on Local Exchange Company's bill from BST and agrees that it shall pay all such charges. Charges for which Local Exchange Company hereby takes responsibility include, but are not limited to, collect and third number calls.
- (b) Charges for such services shall appear on a separate BST bill page identified with the name of the entity for which BST is billing the charge.
- (c) Local Exchange Company shall have the responsibility to render a billing statement to its end users for these charges, but Local Exchange Company's obligation to pay BST for the charges billed shall be independent of whether Local Exchange Company is able or not to collect from the Local Exchange Company's end users.
- (d) BST shall not become involved in any disputes between Local Exchange Company and the entities for which BST performs billing and collection. BellSouth will not issue adjustments for charges billed on behalf of an entity to Local Exchange Company. It

shall be the responsibility of the Local Exchange Company and the other entity to negotiate and arrange for any appropriate adjustments.

## II. TERM

This Agreement will be effective as of \_\_\_\_\_, 1999, and will continue in effect for one year, and thereafter may be continued until terminated by either party upon thirty (30) days written notice to the other party.

## III. FEES FOR SERVICE AND TAXES

A. The Local Exchange Company will not be charged a fee for storage services provided by BST to the Local Exchange Company, as described in Section I of this Agreement.

B. Sales, use and all other taxes (excluding taxes on BST's income) determined by BST or any taxing authority to be due to any federal, state or local taxing jurisdiction with respect to the provision of the service set forth herein will be paid by the Local Exchange Company. The Local Exchange Company shall have the right to have BST contest with the imposing jurisdiction, at the Local Exchange Company's expense, any such taxes that the Local Exchange Company deems are improperly levied.

## IV. INDEMNIFICATION

To the extent not prohibited by law, each party will indemnify the other and hold the other harmless against any loss, cost, claim, injury, or liability relating to or arising out of negligence or willful misconduct by the indemnifying party or its agents or contractors in connection with the indemnifying party's provision of services, provided, however, that any indemnity for any loss, cost, claim, injury or liability arising out of or relating to errors or omissions in the provision of services under this Agreement shall be limited as otherwise specified in this Agreement. The indemnifying party under this Section agrees to defend any suit brought against the other party for any such loss, cost, claim, injury or liability. The indemnified party agrees to notify the other party promptly, in writing, of any written claims, lawsuits, or demands for which the other party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of

claims. The indemnifying party shall not be liable under this Section for settlement by the indemnified party of any claim, lawsuit, or demand unless the defense of the claim, lawsuit, or demand has been tendered to it in writing and the indemnifying party has unreasonably failed to assume such defense.

**V. LIMITATION OF LIABILITY**

Neither party shall be liable to the other party for any lost profits or revenues or for any indirect, incidental or consequential damages incurred by the other party arising from this Agreement or the services performed or not performed hereunder, regardless of the cause of such loss or damage.

**VI. MISCELLANEOUS**

A. It is understood and agreed to by the parties that BST may provide similar services to other companies.

B. All terms, conditions and operations under this Agreement shall be performed in accordance with, and subject to, all applicable local, state or federal legal and regulatory tariffs, rulings, and other requirements of the federal courts, the U. S. Department of Justice and state and federal regulatory agencies. Nothing in this Agreement shall be construed to cause either party to violate any such legal or regulatory requirement and either party's obligation to perform shall be subject to all such requirements.

C. The Local Exchange Company agrees to submit to BST all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement wherein BST's corporate or trade names, logos, trademarks or service marks or those of BST's affiliated companies are mentioned or language from which the connection of said names or trademarks therewith may be inferred or implied; and the Local Exchange Company further agrees not to publish or use advertising, sales promotions, press releases, or publicity matters without BST's prior written approval.

D. This Agreement constitutes the entire agreement between the Local Exchange Company and BST which supersedes all prior agreements or contracts, oral or written representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

E. Except as expressly provided in this Agreement, if any part of this Agreement is held or

construed to be invalid or unenforceable, the validity of any other Section of this Agreement shall remain in full force and effect to the extent permissible or appropriate in furtherance of the intent of this Agreement.

F. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement for any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, 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 common carriers.

G. This Agreement shall be deemed to be a contract made under the laws of the State of Georgia, and the construction, interpretation and performance of this Agreement and all transactions hereunder shall be governed by the domestic law of such State.

**RESALE ADDENDUM  
TO LINE INFORMATION DATA BASE (LIDB)  
STORAGE AGREEMENT**

This is a Resale Addendum to the Line Information Data Base Storage Agreement dated \_\_\_\_\_, 1999, between BellSouth Telecommunications, Inc. ("BST"), and Local Exchange Company ("Local Exchange Company"), effective the \_\_\_\_ day of \_\_\_\_\_, 1999.

**I. GENERAL**

This Addendum sets forth the terms and conditions for Local Exchange Company's provision of billing number information to BST for inclusion in BST's LIDB. BST will store in its LIDB the billing number information provided by Local Exchange Company, and BST will provide responses to on-line, call-by-call queries to this information for purposes specified in Section I.B. of the Agreement.

## II. DEFINITIONS

- A. Billing number - a number used by BST for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.
- B. Line number - a ten digit number assigned by BST that identifies a telephone line associated with a resold local exchange service, or with a SPNP arrangement.
- C. Special billing number - a ten digit number that identifies a billing account established by BST in connection with a resold local exchange service or with a SPNP arrangement.
- D. Calling Card number - a billing number plus PIN number assigned by BST.
- E. PIN number - a four digit security code assigned by BST which is added to a billing number to compose a fourteen digit calling card number.
- F. Toll billing exception indicator - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by the Local Exchange Company.
- G. Billed Number Screening - refers to the activity of determining whether a toll billing exception indicator is present for a particular billing number.
- H. Calling Card Validation - refers to the activity of determining whether a particular calling card number exists as stated or otherwise provided by a caller.
- I. Billing number information - information about billing number or Calling Card number as assigned by BST and toll billing exception indicator provided to BST by the Local Exchange Company.

## III. RESPONSIBILITIES OF PARTIES

- A. BST will include billing number information associated with resold exchange lines or SPNP arrangements in its LIDB. The Local Exchange Company will request any toll billing exceptions via the Local Service Request (LSR) form used to order resold exchange lines, or the SPNP service request form used to order SPNP arrangements.
- B. Under normal operating conditions, BST shall include the billing number information in its LIDB upon completion of the service order establishing either the resold local exchange service or the SPNP

arrangement, provided that BST shall not be held responsible for any delay or failure in performance to the extent such delay or failure is caused by circumstances or conditions beyond BST's reasonable control. BST will store in its LIDB an unlimited volume of the working telephone numbers associated with either the resold local exchange lines or the SPNP arrangements. For resold local exchange lines or for SPNP arrangements, BST will issue line-based calling cards only in the name of Local Exchange Company. BST will not issue line-based calling cards in the name of Local Exchange Company's individual end users. In the event that Local Exchange Company wants to include calling card numbers assigned by the Local Exchange Company in the BST LIDB, a separate agreement is required.

C. BST will provide responses to on-line, call-by-call queries to the stored information for the specific purposes listed in the next paragraph.

D. BST is authorized to use the billing number information to perform the following functions for authorized users on an on-line basis:

1. Validate a 14 digit Calling Card number where the first 10 digits are a line number or special billing number assigned by BST, and where the last four digits (PIN) are a security code assigned by BST.
2. Determine whether the Local Exchange Company has identified the billing number as one which should not be billed for collect or third number calls, or both.

## RAO Hosting

- 1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to CCI by BellSouth will be in accordance with the methods and practices regularly adopted and applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 2 CCI shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 3 Applicable compensation amounts will be billed by BellSouth to CCI on a monthly basis in arrears. Amounts due from one Party to the other (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.
- 4 CCI must have its own unique RAO code. Requests for establishment of RAO status where BellSouth is the selected Centralized Message Distribution System (CMDS) interfacing host, require written notification from CCI to the BellSouth RAO Hosting coordinator at least eight (8) weeks prior to the proposed effective date. The proposed effective date will be mutually agreed upon between the Parties with consideration given to time necessary for the completion of required Telcordia (formerly BellCore) functions. BellSouth will request the assignment of an RAO code from its connecting contractor, currently Telcordia (formerly BellCore), on behalf of CCI and will coordinate all associated conversion activities.
- 5 BellSouth will receive messages from CCI that are to be processed by BellSouth, another LEC or CLEC in the BellSouth region or a LEC outside the BellSouth region.
- 6 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from CCI.
- 7 All data received from CCI that is to be processed or billed by another LEC or CLEC within the BellSouth region will be distributed to that LEC or CLEC in accordance with the agreement(s) which may be in effect between BellSouth and the involved LEC or CLEC.
- 8 All data received from CCI that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) which may be in effect between BellSouth and its connecting contractor (currently Telcordia (formerly BellCore)).
- 9 BellSouth will receive messages from the CMDS network that are destined to be processed by CCI and will forward them to CCI on a daily basis.
- 10 Transmission of message data between BellSouth and CCI will be via CONNECT:Direct.
- 11 All messages and related data exchanged between BellSouth and CCI will be formatted in accordance with accepted industry standards for EMI formatted records and packed between appropriate EMI header and trailer records, also in accordance with accepted industry standards.
- 12 CCI will ensure that the recorded message detail necessary to recreate files provided to BellSouth will be maintained for back-up purposes for a period of three (3) calendar months beyond the related message dates.

- 13 Should it become necessary for CCI to send data to BellSouth more than sixty (60) days past the message date(s), CCI will notify BellSouth in advance of the transmission of the data. If there will be impacts outside the BellSouth region, BellSouth will work with its connecting contractor and CCI to notify all affected Parties.
- 14 In the event that data to be exchanged between the two Parties should become lost or destroyed, both Parties will work together to determine the source of the problem. Once the cause of the problem has been jointly determined and the responsible Party (BellSouth or CCI) identified and agreed to, the company responsible for creating the data (BellSouth or CCI) will make every effort to have the affected data restored and retransmitted. If the data cannot be retrieved, the responsible Party will be liable to the other Party for any resulting lost revenue. Lost revenue may be a combination of revenues that could not be billed to the end users and associated access revenues. Both Parties will work together to estimate the revenue amount based upon historical data through a method mutually agreed upon. The resulting estimated revenue loss will be paid by the responsible Party to the other Party within three (3) calendar months of the date of problem resolution, or as mutually agreed upon by the Parties.
- 15 Should an error be detected by the EMI format edits performed by BellSouth on data received from CCI, the entire pack containing the affected data will not be processed by BellSouth. BellSouth will notify CCI of the error condition. CCI will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, CCI will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.
- 16 In association with message distribution service, BellSouth will provide CCI with associated intercompany settlements reports (CATS and NICS) as appropriate.
- 17 In no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this agreement.
- 18 RAO Compensation
- 18.1 Rates for message distribution service provided by BellSouth for CCI are as set forth in Exhibit A to this Attachment.
- 18.2 Rates for data transmission associated with message distribution service are as set forth in Exhibit A to this Attachment.
- 18.3 Data circuits (private line or dial-up) will be required between BellSouth and CCI for the purpose of data transmission. Where a dedicated line is required, CCI will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CCI will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CCI. Additionally, all message toll charges associated with the use of the dial circuit by CCI will be the responsibility of CCI. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the Parties.
- 18.4 All equipment, including modems and software, that is required on the CCI end for the purpose of data transmission will be the responsibility of CCI.



19 Intercompany Settlements Messages

- 19.1 This Section addresses the settlement of revenues associated with traffic originated from or billed by CCI as a facilities based provider of local exchange telecommunications services outside the BellSouth region. Only traffic that originates in one Bell operating territory and bills in another Bell operating territory is included. Traffic that originates and bills within the same Bell operating territory will be settled on a local basis between CCI and the involved company(ies), unless that company is participating in NICS.
- 19.2 Both traffic that originates outside the BellSouth region by CCI and is billed within the BellSouth region, and traffic that originates within the BellSouth region and is billed outside the BellSouth region by CCI, is covered by this Agreement (CATS). Also covered is traffic that either is originated by or billed by CCI, involves a company other than CCI, qualifies for inclusion in the CATS settlement, and is not originated or billed within the BellSouth region (NICS).
- 19.3 Once CCI is operating within the BellSouth territory, revenues associated with calls originated and billed within the BellSouth region will be settled via Telcordia (formerly BellCore)'s, its successor or assign, NICS system.
- 19.4 BellSouth will receive the monthly NICS reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CCI. BellSouth will distribute copies of these reports to CCI on a monthly basis.
- 19.5 BellSouth will receive the monthly Calling Card and Third Number Settlement System (CATS) reports from Telcordia (formerly BellCore), its successor or assign, on behalf of CCI. BellSouth will distribute copies of these reports to CCI on a monthly basis.
- 19.6 BellSouth will collect the revenue earned by CCI from the Bell operating company in whose territory the messages are billed (CATS), less a per message billing and collection fee of five cents (\$0.05), on behalf of CCI. BellSouth will remit the revenue billed by CCI to the Bell operating company in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), on behalf of CCI. These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CCI via a monthly Carrier Access Billing System (CABS) miscellaneous bill.
- 19.7 BellSouth will collect the revenue earned by CCI within the BellSouth territory from another CLEC also within the BellSouth territory (NICS) where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of CCI. BellSouth will remit the revenue billed by CCI within the BellSouth region to the CLEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two amounts will be netted together by BellSouth and the resulting charge or credit issued to CCI via a monthly Carrier Access Billing System (CABS) miscellaneous bill.

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

## Optional Daily Usage File

1 Upon written request from CCI, BellSouth will provide the Optional Daily Usage File (ODUF) service to CCI pursuant to the terms and conditions set forth in this section.

2 The CCI shall furnish all relevant information required by BellSouth for the provision of the Optional Daily Usage File.

3 The Optional Daily Usage Feed will contain billable messages that were carried over the BellSouth Network and processed in the BellSouth Billing System, but billed to a CCI customer.

Charges for delivery of the Optional Daily Usage File will appear on the CCIs' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

4 The Optional Daily Usage Feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

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

6 The following specifications shall apply to the Optional Daily Usage Feed.

### *6.1 Usage To Be Transmitted*

6.1.1 The following messages recorded by BellSouth will be transmitted to the CCI:

- message recording for per use/per activation type services (examples: Three Way Calling, Verify, Interrupt, Call Return, ETC.)
- measured billable Local
- Directory Assistance messages
- intraLATA Toll
- WATS & 800 Service
- N11
- Information Service Provider Messages
- Operator Services Messages
- Operator Services Message Attempted Calls (UNE only)
- Credit/Cancel Records
- Usage for Voice Mail Message Service

- 6.1.2 Rated Incollects (originated in BellSouth and from other companies) can also be on Optional Daily Usage File. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.
- 6.1.3 BellSouth will perform duplicate record checks on records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CCI.
- 6.1.4 In the event that CCI detects a duplicate on Optional Daily Usage File they receive from BellSouth, CCI will drop the duplicate message (CCI will not return the duplicate to BellSouth).

## 6.2 *Physical File Characteristics*

- 6.2.1 The Optional Daily Usage File will be distributed to CCI via an agreed medium with CONNECT:Direct being the preferred transport method. The Daily Usage Feed will be a variable block format (2476) with an LRECL of 2472. The data on the Daily Usage Feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays). Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.
- 6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CCI for the purpose of data transmission. Where a dedicated line is required, CCI will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CCI will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CCI. Additionally, all message toll charges associated with the use of the dial circuit by CCI will be the responsibility of CCI. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the parties. All equipment, including modems and software, that is required on CCI end for the purpose of data transmission will be the responsibility of CCI.

## 6.3 **Packing Specifications**

- 6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
- 6.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CCI which BellSouth RAO that is sending the message. BellSouth and CCI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CCI and resend the data as appropriate.

### **THE DATA WILL BE PACKED USING ATIS EMI RECORDS.**

## 6.4 **Pack Rejection**

- 6.4.1 CCI will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. CCI will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to CCI by BellSouth.

## 6.5 Control Data

CCI will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate CCI received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by CCI for reasons stated in the above section.

## 6.6 Testing

- 6.6.1 Upon request from CCI, BellSouth shall send test files to CCI for the Optional Daily Usage File. The parties agree to review and discuss the file's content and/or format. For testing of usage results, BellSouth shall request that CCI set up a production (LIVE) file. The live test may consist of CCI's employees making test calls for the types of services CCI requests on the Optional Daily Usage File. These test calls are logged by CCI, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within 30 calendar days from the date on which the initial test file was sent.

### Enhanced Optional Daily Usage File

- 1 Upon written request from CCI, BellSouth will provide the Enhanced Optional Daily Usage File (EODUF) service to CCI pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
- 2 The CCI shall furnish all relevant information required by BellSouth for the provision of the Enhanced Optional Daily Usage File.
- 3 The Enhanced Optional Daily Usage File (EODUF) will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.

Charges for delivery of the Enhanced Optional Daily Usage File will appear on the CCIs' monthly bills. The charges are as set forth in Exhibit A to this Attachment.

- 4 All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
- 5 Messages that error in the billing system of the CCI will be the responsibility of the CCI. If, however, the CCI should encounter significant volumes of errored messages that prevent processing by the CCI within its systems, BellSouth will work with the CCI to determine the source of the errors and the appropriate resolution.
- 6 The following specifications shall apply to the Optional Daily Usage Feed.

#### *6.1 Usage To Be Transmitted*

- 6.1.1 The following messages recorded by BellSouth will be transmitted to CCI:

Customer usage data for flat rated local call originating from CLEC end user lines (1FB or 1FR).  
The EODUF record for flat rate messages will include:

Date of Call  
From Number  
To Number  
Connect Time  
Conversation Time  
Method of Recording  
From RAO  
Rate Class  
Message Type  
Billing Indicators  
Bill to Number

- 6.1.2 BellSouth will perform duplicate record checks on EODUF records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to CCI.

- 6.1.3 In the event that CCI detects a duplicate on Enhanced Optional Daily Usage File they receive from BellSouth, CCI will drop the duplicate message (CCI will not return the duplicate to BellSouth).

## 6.2 *Physical File Characteristics*

- 6.2.1 The Enhanced Optional Daily Usage Feed will be distributed to CCI over their existing Optional Daily Usage File (ODUF) feed. The EODUF messages will be intermingled among CCI's Optional Daily Usage File (ODUF) messages. The EODUF will be a variable block format (2476) with an LRECL of 2472. The data on the EODUF will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays).
- 6.2.2 Data circuits (private line or dial-up) may be required between BellSouth and CCI for the purpose of data transmission. Where a dedicated line is required, CCI will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. CCI will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to CCI. Additionally, all message toll charges associated with the use of the dial circuit by CCI will be the responsibility of CCI. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the parties. All equipment, including modems and software, that is required on CCI end for the purpose of data transmission will be the responsibility of CCI.

## 6.3 **Packing Specifications**

- 6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
- 6.3.2 The Operating Company Number (OCN), From Revenue Accounting Office (RAO), and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to CCI which BellSouth RAO that is sending the message. BellSouth and CCI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by CCI and resend the data as appropriate.

**THE DATA WILL BE PACKED USING ATIS EMI RECORDS.**

## CALLING NAME DELIVERY (CNAM) DATABASE SERVICES

### 1.00 DEFINITIONS

For the purpose of this Attachment, the following terms shall be defined as:

**CALLING NAME DELIVERY DATABASE SERVICE (CNAM)** - The ability to associate a name with the calling party number, allowing the end user subscriber (to which a call is being terminated) to view the calling party's name before the call is answered. This service also provides CCICCI the opportunity to load and store its subscriber names in the BellSouth CNAM SCPs.

**CALLING PARTY NUMBER (CPN)** - The number of the calling party that is delivered to the terminating switch using common channel signaling system 7 (CCS7) technology, and that is contained in the Initial Address Message (IAM) portion of the CCS7 call setup.

**COMMON CHANNEL SIGNALING SYSTEM 7 (CCS7)** - A network signaling technology in which all signaling information between two or more nodes is transmitted over high-speed data links, rather than over voice circuits.

**SERVICE CONTROL POINTs (SCPs)** - The real-time data base systems that contain the names to be provided in response to queries received from CNAM SSPs.

**SERVICE MANAGEMENT SYSTEM (SMS)** - The main operations support system of CNAM DATABASE SERVICE. CNAM records are loaded into the SMS, which in turn downloads into the CNAM SCP.

**SERVICE SWITCHING POINTs (SSPs)** - Features of computerized switches in the telephone network that determine that a terminating line has subscribed to CNAM service, and then communicate with CNAM SCPs in order to provide the name associated with the calling party number.

**SUBSYSTEM NUMBER (SSN)** - The address used in the Signaling Connection Control Part (SCCP) layer of the SS7 protocol to designate an application at an end signaling point. A SSN for CNAM at the end office designates the CNAM application within the end office. BellSouth uses the CNAM SSN of 232.

### 2.0 ATTACHMENT

2.01 This Attachment contains the terms and conditions where BellSouth will provide to the CCI access to the BellSouth CNAM SCP for query or record storage purposes.

2.02 CCI shall submit to BellSouth a notice of its intent to access and utilize BellSouth CNAM Database Services pursuant to the terms and conditions of this Attachment. Said notice shall be in writing, no less than 60 days prior to CCI's access to BellSouth's CNAM Database Services and shall be addressed to CCI's Account Manager.

### 3.00 PHYSICAL CONNECTION AND COMPENSATION

3.01 BellSouth's provision of CNAM Database Services to CCI requires interconnection from CCI CCI to BellSouth CNAM Service Control Points (SCPs). Such interconnections shall be established pursuant to

Attachment 3 of this Agreement . The appropriate charge for access to and use of the BellSouth CNAM Database service shall be as set forth in this Attachment.

- 3.02 In order to formulate a CNAM query to be sent to the BellSouth CNAM SCP, CCI shall provide its own CNAM SSP. CCI's CCICNAM SSPs must be compliant with TR-NWT-001188, "CLASS Calling Name Delivery Generic Requirements".
- 3.03 If CCI elects to access the BellSouth CNAM SCP via a third party CCS7 transport provider, the third party CCS7 provider shall interconnect with the BellSouth CCS7 network according to BellSouth's Common Channel Signaling Interconnection Guidelines and Telcordia (formerly BellCore)'s CCS Network Interface Specification document, TR-TSV-000905. In addition, the third party provider shall establish CCS7 interconnection at the BellSouth Local Signal Transfer Points (LSTPs) serving the BellSouth CNAM SCPs that CCI desires to query.
- 3.04 Out-Of-Region Customers. If the customer queries the BellSouth CNAM SCP via a third party national SS7 transport provider, the third party SS7 provider shall interconnect with the BellSouth CCS7 network according to BellSouth's Common Channel Signaling Interconnection Guidelines and Bellcore's CCS Network Interface Specification document, TR-TSV-000905. In addition, the third party provider shall establish SS7 interconnection at one or more of the BellSouth Gateway Signal Transfer Points (STPs). The payment of all costs associated with the transport of SS7 signals via a third party will be established by mutual agreement of the parties and writing shall, by this reference become an integral part of this Agreement.

#### **4.00 CNAM RECORD INITIAL LOAD AND UPDATES**

- 4.01 The mechanism to be used by CCI for initial CNAM record load and/or updates shall be determined by mutual agreement. The initial load and all updates shall be provided by CCI in the BellSouth specified format and shall contain records for every working telephone number that can originate phone calls. It is the responsibility of CCI to provide accurate information to BellSouth on a current basis.
- 4.02 Updates to the SMS shall occur no less than once a week, reflect service order activity affecting either name or telephone number, and involve only record additions, deletions or changes.
- 4.03 CCI CNAM records provided for storage in the BellSouth CNAM SCP shall be available, on a SCP query basis only, to all parties querying the BellSouth CNAM SCP. Further, CNAM service shall be provided by each party consistent with state and/or federal regulation.



**CASE**

**NUMBER:**

99 . 423

HISTORY INDEX FOR CASE: 1999-423  
KENTUCKY TURNPIKE WATER DISTRICT DIVISION I  
Investigation - Service  
ASSESSMENT ON CUSTOMER PARTICIPATION FEES

AN INVESTIGATION INTO THE ASSESSMENT ON CUSTOMER  
PARTICIPATION FEES BY KENTUCKY TURNPIKE WATER DISTRICT

SEQ NBR	ENTRY DATE	REMARKS
0001	10/13/1999	Order establishing show cause proceeding; incorporates 97-323 into this case
M0002	12/01/1999	MICHAEL FORBES UAW LEGAL SERVICES-REQUEST FOR PSC TO INTERVENE
M0001	12/03/1999	LOUIS & RITA MANNING-REQUEST FOR INTERVENTION
0002	12/13/1999	Order granting Louis and Rita Manning intervention
0003	02/22/2000	Order entered; requests for final hearing due 3/8 or case stands submitted
M0003	03/08/2000	JOHN MILLER & RICHARD HAARMANS-COMMENTS PER 2-22-00 ORDER OF PSC
M0004	03/08/2000	BURKE REALTY GERALD BURKE-COMMENT PER 2-22-00 ORDER OF PSC
M0005	03/08/2000	BRUCE CLARK KY TURNPIKE WD-WRITTEN COMMENTS & REQ FOR HEARING & BRIEFING SCHEDULE
0004	05/10/2000	Procedural schedule, testimony due 6/1, hearing 6/29 at 10a.m. in hearing room 2
M0006	05/30/2000	BRUCE CLARK/KY TURNPIKE-MOTION FOR CONTINUANCE OF HEARING DATE & TESTIMONY DEADLINES
0005	06/14/2000	Order granting motion for continuance; suspends procedural schedule
0006	08/02/2000	FINAL ORDER; REFUND OF ALL CUSTOMER PARTICIPATION FEES & DEVELOPER FEES DUE



Paul E. Patton, Governor  
Ronald B. McCloud, Secretary  
Public Protection and  
Regulation Cabinet  
Thomas M. Dorman  
Executive Director  
Public Service Commission

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
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FRANKFORT, KENTUCKY 40602-0615  
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(502) 564-3940  
Fax (502) 564-3460

Martin J. Huelsmann  
Chairman  
Edward J. Holmes  
Vice Chairman  
Gary W. Gillis  
Commissioner

February 2, 2001

W. Brent Rice, Esq.  
McBrayer, McGinnis, Leslie & Kirkland PLLC  
163 West Short Street  
Suite 300  
Lexington, Kentucky 40507-1361

RE: BellSouth Case #'s.: 1994-121 and 1999-434  
GTE Case #'s: 2000-069 and 2000-260

Dear Mr. Rice:

On January 8, 2001, the Commission received your request to protect as confidential the requesting letter and attachments concerning VarTec Telecom, Inc.'s intrastate access rate reductions as it relates to the rate reductions implemented in the above-referenced cases. KRS 61.872(1) requires information filed with the Commission to be made available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1).

The procedure for obtaining confidential protection for information filed with the Commission is prescribed in 807 KAR 5:001. Among other things, the regulation requires that requests for confidential protection be made by petition describing the information sought to be protected, setting forth the grounds upon which exemption from public disclosure is claimed and, where the exemption is claimed on the basis of competitive injury, identifying the competitors who would derive benefit from the information. Because your request does not satisfy the requirements of the regulation, the Commission cannot act upon it.

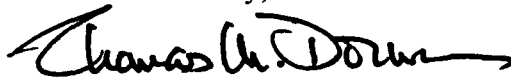
*mailed on 2/12/2001 k.c.*



W. Brent Rice  
February 2, 2001  
Page 2

The information shall be withheld from public inspection for twenty(20) days to allow you an opportunity to file a petition that complies with the regulation. If no petition is filed within that period, the information shall be placed in the public record.

Sincerely,



Thomas M. Dorman  
Executive Director





COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-423  
KENTUCKY TURNPIKE WATER DISTRICT DIVISION I

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on August 2, 2000.

See attached parties of record.

*Stephanie J. Bell*

Secretary of the Commission

SB/sa  
Enclosure

F. Raymond Abell  
District Manager  
Kentucky Turnpike Water District  
Division I  
3396 Burkland Boulevard  
Shepherdsville , KY. 40165

Gerald P. Burke  
President  
Burke Realty Company, Inc.  
3402 Burkland Blvd.  
Shepherdsville , KY. 40165

Hon. John W. Wooldridge  
278 Frank E. Simon Ave.  
P.O. Box 670  
Shepherdsville , KY. 40165

Charles R. Smith  
1111 Ridge Road  
Shepherdsville , KY. 40165

Honorable David A. Pike  
Honorable F. Keith Brown  
Attorneys for Miller & Haarman  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville , KY. 40165

Hon. Bruce F. Clark  
Hon. Jason P. Thomas  
STITES & HARBISON  
421 West Main Street  
P.O. Box 634  
Frankfort, KY. 40602 0634

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville , KY. 40165

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT ON )  
CUSTOMER PARTICIPATION FEES BY KENTUCKY ) CASE NO. 99-423  
TURNPIKE WATER DISTRICT )

ORDER

Pursuant to the terms of the Settlement Agreement between Commission Staff and Kentucky Turnpike Water District ("KTWD") and approved by the Commission in Case No. 99-237,<sup>1</sup> IT IS HEREBY ORDERED that:

1. KTWD shall, no later than June 30, 2005, refund all customer participation fees and developer fees collected from persons connecting any structure to KTWD's Cedar Grove Road Water Transmission Main and not specifically addressed in the Commission's Orders of September 1, 1999 and October 13, 1999 in Case No. 97-323.<sup>2</sup> The names and addresses of those persons to whom refunds shall be made and the total amount of such refund are set forth in Appendix A to this Order.

2. KTWD shall refund at least \$39,270 of these fees annually until all fees in question have been refunded. The first installment shall be made on or before June 30, 2001. The refund installment for each successive year shall be made no later than

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<sup>1</sup> Case No. 99-237, Application of Kentucky Turnpike Water District for a Certificate of Public Convenience and Necessity to Construct a Water Main Extension to the Nichols Area of Bullitt County, Kentucky (June 23, 2000).

<sup>2</sup> Case No. 97-323, Burke Realty Co. v. Kentucky Turnpike Water District.

June 30 of that year. These refunds shall be made to all affected customers on a pro rata basis. KTWD may, at its option, refund these fees over a lesser period of time.

3. No interest shall be paid on the amount to be refunded if KTWD makes the required refunds in a timely manner. In the event KTWD does not strictly comply with Ordering Paragraph 2, then KTWD shall pay interest at the rate of twelve (12) per cent per annum from and after the date of entry of an Order approving this Settlement Agreement on all unpaid amounts until all refunds have been paid in full.

4. In the event that KTWD transfers its facilities and assets to an entity whose retail utility operations are not subject to the Commission's jurisdiction, the remaining amount of unrefunded fees shall be refunded no later than 30 days prior to the proposed effective date of such transfer unless KTWD provides adequate assurance to the Commission that the unrefunded fees will be distributed in accordance with the terms of this Settlement Agreement.

5. KTWD shall, within 30 days of the date of this Order, serve a copy of this Order upon all persons listed in Appendix A and shall advise each of their right to a refund.

6. On or before July 31, 2001 and on July 31 of each year thereafter until all amounts are refunded, KTWD shall file with the Commission a written report on the progress of its refunding efforts. This report shall state the amount refunded during the last year, the total amount refunded, and the amount of unclaimed refunds that were forwarded to the Kentucky Secretary of State.



Done at Frankfort, Kentucky, this 2nd day of August, 2000.

By the Commission

ATTEST:

W<sup>c</sup> H. Bosher, Acting  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN  
CASE NO. 99-423 DATED AUGUST 2, 2000

Last Name	First Name	Address	City	State	Zip Code	Refund Amount
Arnold	Carroll & Faye	6598 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Beard	John	6123 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Berman	Minnie	5432 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Bleemel	Doyle	408 Evans Lane	Mount Washington	KY	40047	\$2,550
Breeding	J. D.	7631 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Brooks Builder, Inc.	Jim	9000 Blue Lick Rd	Louisville	KY	40219	\$2,550
Burke Realty Co., Inc.		3402 Burkland Blvd	Shepherdsville	KY	40165	\$2,550
Cedar Grove Baptist Church		4900 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Cedar Grove Methodist Church		1174 Licksillet Dr	Shepherdsville	KY	40165	\$2,550
Ciaburri	Brian	7906 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Colwell	French	4708 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Cook (1)	Perry	6764 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Cook (2)	Perry & Diane	6764 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Corbett	Carol & Ed	8891 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Corbett	Mark	8623 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Corbett Jr	Eddie	200 Carter Ave	Louisville	KY	40229	\$2,550
Corley	Eric & Tiffany	6505 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Coy	Robert & Patricia	3335 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Cummings	Dennis	6486 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Evans	Darrell	203 Ridge Rd	Shepherdsville	KY	40165	\$2,550
Ferguson	Wayne D.	2831 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Greenwell	Larry	8100 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Greschel	George	160 Mcgruder Ln	Shepherdsville	KY	40165	\$2,550
Grimes	Charles & Vicki Jo	P.O. Box 1035	Shepherdsville	KY	40165	\$2,550
Haarman	Richard	199 White Tail Circle	Shepherdsville	KY	40165	\$2,550
Hardy	Sam	P.O. Box 428	Shepherdsville	KY	40165	\$2,550
Harshfield	Lisa	5309 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Hayes	Roger	3983 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Hodge	Robert C. & Ida	8405 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Hoerter	Robert	6071 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Huff	Richard	110 Ryan Patrick Dr	Shepherdsville	KY	40165	\$2,550
Jackson	Lowell & Judy	7507 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Jackson	Virgil	P.O. Box 304	Shepherdsville	KY	40165	\$2,550
Jobe	Ronnie & Peggy	4608 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Kays	Joseph	5360 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Korfhage	Ted & Gayle	350 Mooney Ln	Shepherdsville	KY	40165	\$2,550
Leach	Thomas	8198 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Lewis	Randy & Becky	6849 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Lewis	M. Jean	160 Flintstone Ct	Shepherdsville	KY	40165	\$2,550
Likens	Jerry	233 Symmetric St	Louisville	KY	40229	\$2,550
Madden	Martha D.	5273 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Matheny	Robert & Brenda	6115 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Mattingly	Alan & Donna	4075 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Mcdade	Robert & Sarah	2185 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Miles	James A.	4943 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Miller (1)	John	289 White Tail Circle	Shepherdsville	KY	40165	\$2,550
Miller (2)	John	289 White Tail Circle	Shepherdsville	KY	40165	\$2,550
Miller Builders	J.	289 White Tail Circle	Shepherdsville	KY	40165	\$2,550
Montgomery	Paul	4019 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Nalley	Tom	3402 Hardwood Forest Dr	Louisville	KY	40214	\$2,550

Last Name	First Name	Address	City	State	Zip Code	Refund Amount
Newsome	Judy	6647 Cedar Grove Rd .	Shepherdsville	KY	40165	\$2,550
Newsome	Gobel	302 Arnold Ln	Shepherdsville	KY	40165	\$2,550
Parsley	Paul & Teatta	3747 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Plenge	Steve	2340 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Ratliff	Otis Ray	6094 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Routon	Kenneth R.	6634 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Shafer	Wayne E.	5503 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Simmons	Peggy	5871 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Skidmore	Lewis & Darlene	3681 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Smith	Donald & Chandra	107 Ryan Patrick Dr	Shepherdsville	KY	40165	\$2,550
Sparks	Robert	6885 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Stargel	Willie	1146 Woodsdale Rd	Shepherdsville	KY	40165	\$2,550
Straub	Al	5328 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Taylor	David L.	201 Terry Blvd	Louisville	KY	40229	\$2,550
Thomas	Tony	2607 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Troutman	Everett & Pat	7586 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Vincent	James G.	4820 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Warren	Dale & Cindy	4901 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Webb	Agnes	6023 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Weller	Daniel & Theora	2761 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
White	Keith & Dottie	2636 Bells Mill Rd	Shepherdsville	KY	40165	\$2,550
Whiteside	Harold & Maria	7936 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Wierwille	Janet	5239 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Wolf Jr	Charles B.	4981 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Woods	David & Stephanie	5760 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Woods	Barry & Lois	4535 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550
Young	Judy & Allen	4736 Cedar Grove Rd	Shepherdsville	KY	40165	\$2,550



COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940


June 14, 2000

To: All parties of record

RE: Case No. 1999-423

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

  
Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

F. Raymond Abell  
District Manager  
Kentucky Turnpike Water District  
Division I  
3396 Burkland Boulevard  
Shepherdsville , KY 40165

Gerald P. Burke  
President  
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Shepherdsville , KY 40165

Charles R. Smith  
1111 Ridge Road  
Shepherdsville , KY 40165

Honorable David A. Pike  
Honorable F. Keith Brown  
Attorneys for Miller & Haarman  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville , KY 40165

Hon. Bruce F. Clark  
Hon. Jason P. Thomas  
STITES & HARBISON  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602 0634

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville , KY 40165

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT ON )  
CUSTOMER PARTICIPATION FEES BY KENTUCKY ) CASE NO. 99-423  
TURNPIKE WATER DISTRICT )

ORDER

Kentucky Turnpike Water District having moved for a continuance in this proceeding, and the Commission having considered the motion and taking administrative notice of the filing of a settlement agreement in Case No. 99-237,<sup>1</sup>

IT IS HEREBY ORDERED that:

1. Kentucky Turnpike's motion for a continuance is granted.
2. The procedural schedule set forth in the Commission's Order of May 10, 2000 is suspended.
3. All parties shall have 7 days from the date of this Order to submit any comments regarding Paragraphs 5 and 6 of the Settlement Agreement, a copy of which is appended hereto as Exhibit A.

Done at Frankfort, Kentucky, this 14th day of June, 2000.

By the Commission

ATTEST:

  
Executive Director

<sup>1</sup> Case No. 99-237, Application of Kentucky Turnpike Water District for a Certificate of Public Convenience and Necessity to Construct a Water Main Extension to the Nichols Area of Bullitt County, Kentucky.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

JUN - 7 2000

In the Matter of:

APPLICATION OF KENTUCKY TURNPIKE WATER )  
DISTRICT FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO CONSTRUCT ) CASE NO. 99-237  
A WATER MAIN EXTENSION TO THE NICHOLS )  
AREA OF BULLITT COUNTY, KENTUCKY )

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 1<sup>st</sup> day of June 2000, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff"), KENTUCKY TURNPIKE WATER DISTRICT ("KTWD"), DAN THIBODEAUX, GEORGE MILLER, ELMER MILLS, AND RAYMOND ABELL.

WITNESSETH:

WHEREAS, on June 14, 1999, KTWD submitted to the Public Service Commission an application for a Certificate of Public Convenience and Necessity to construct a water transmission main along Nichols Road in Bullitt County, Kentucky; and,

WHEREAS, on September 8, 1999, KTWD advised the Public Service Commission that construction of the proposed water transmission main had begun; and,

WHEREAS, on September 26, 1999, KTWD publicly announced that construction of the proposed water transmission main had been substantially completed; and,

WHEREAS, on October 20, 1999, the Public Service Commission found that a prima facie showing had been made that KTWD had violated KRS 278.020(1) by its

construction of the proposed water transmission main without first obtaining a Certificate of Public Convenience and Necessity from the Commission and that Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell had aided KTWD in its failure to comply with KRS 278.020(1); and,

WHEREAS, on October 20, 1999, the Public Service Commission ordered KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell to show cause why they should not be subject to the penalties of KRS 278.990 for their alleged misconduct; and,

WHEREAS, Commission Staff, KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell have stipulated to the following:

1. KTWD is a water district organized pursuant to KRS Chapter 74.
2. KTWD is organized into two divisions – Division I and Division II.
3. KTWD owns the facilities that provide water service to Division I. The Louisville Water Company, however, operates these facilities under the terms of a 1968 Lease Agreement.
4. As of December 31, 1998, KTWD's Division I had net utility plant of \$6,861,846.
5. As of December 31, 1998, KTWD's Division II had net utility plant of \$4,443,948.
6. KTWD's Board of Commissioners is composed of three members who control and manage the affairs of the water district.
7. Dan Thibodeaux is a member of KTWD's Board of Commissioners and has been since on or about January 1, 1997.
8. George Miller is a member of KTWD's Board of Commissioners and has been since on or about January 9, 1995.



9. Elmer Mills is a member of KTWD's Board of Commissioners and has been since on or about December 7, 1993.

10. Raymond Abell is the General Manager of KTWD and has held that position since on or about June 21, 1997. As General Manager, he is responsible for KTWD's daily operations.

11. On April 1, 1998, the Kentucky General Assembly appropriated \$500,000 for the construction of a water transmission main along Nichols Road in Bullitt County, Kentucky, if sufficient funds were available in the General Fund.

12. On July 31, 1998, John P. McCarty, Secretary of the Kentucky Finance and Administration Cabinet, certified that sufficient surplus funds exist in the General Fund to fund the Nichols Road Water Main Extension.

13. On November 5, 1998, KTWD Water District's Board of Commissioners approved a resolution authorizing KTWD to enter into a Memorandum of Understanding with the Kentucky Finance and Administration Cabinet to obtain funding for the Nichols Road Water Main Extension.

14. On or about December 29, 1998, KTWD requested an opinion from Commission Staff on the need for a certificate of public convenience and necessity for the Nichols Road Water Main Extension.

15. On January 12, 1999, KTWD and the Kentucky Finance and Administration Cabinet executed a Memorandum of Understanding concerning the Commonwealth's grant of \$500,000 to KTWD for the Nichols Road Water Main Extension.

16. The Memorandum of Understanding between KTWD and the Kentucky Finance and Administration Cabinet required KTWD to begin construction of the proposed Nichols Road Water Main Extension no later than April 1, 1999 and to complete the proposed Nichols Road Water Main Extension no later than September 1, 1999.

17. The purpose of the Nichols Road Water Main Extension was to provide water and fire protection to the Nichols Elementary School, which is located approximately 8 miles

west of Shepherdsville, Kentucky on Kentucky Highway 44W.

18. KTWD officials represented to the Bullitt County Board of Education that the proposed Nichols Road Water Main Extension would be in operation and serving the Nichols Elementary School by the beginning of the 1999-2000 School Year.

19. The proposed Nichols Road Water Main Extension consists of two phases. In the first phase, KTWD proposed to construct approximately 23,000 feet of 12-inch water transmission main. In the second phase, it proposed to construct an additional 29,000 feet of 12-inch water transmission main.

20. KTWD estimated the cost of the proposed Nichols Road Water Main Extension at approximately \$1,000,000. It proposed to fund this project through a \$500,000 grant from the Commonwealth of Kentucky and a contribution of \$100,000 from the Bullitt County Board of Education. It further proposed that each customer connecting to the proposed extension, except for Nichols Elementary School, contribute \$4,000 at the time of connection. KTWD estimated that 100 persons would connect to the proposed water extension.

21. On March 15, 1999, KTWD officials met with Commission Staff to discuss its proposed water main extension arrangement for the Nichols Road Water Main Extension.

22. On April 1, 1999, Commission Staff submitted suggested changes to KTWD's proposed water main extension arrangement.

23. On April 19, 1999, KTWD submitted another request for an opinion from Commission Staff on the need for a certificate of public convenience and necessity for the Nichols Road Water Main Extension.

24. On April 20, 1999, the Public Service Commission received KTWD's application for approval of its proposed water main extension arrangement for the Nichols Road Water Main Extension and docketed this application as Case No. 99-192.

25. On May 21, 1999, the Executive Director of the Public Service issued a written opinion in which she advised that the Nichols Road Water Main Extension required a certificate of public convenience and necessity.
26. On June 2, 1999, KTWD opened construction bids on the Nichols Road Water Main Extension.
27. On June 11, 1999, the Public Service Commission issued a final order in Case No. 99-192 in which it approved KTWD's proposed water main extension arrangement for the Nichols Road Water Main Extension.
28. On June 14, 1999, the Kentucky Division of Water approved the plans and specifications for the proposed Nichols Road Water Main Extension.
29. On June 14, 1999, KTWD filed with the Public Service Commission an application for a certificate of public convenience and necessity for the proposed Nichols Road Water Main Extension.
30. On June 22, 1999, KTWD applied to the Kentucky Department of Transportation for an encroachment permit for the Nichols Road Water Main Extension.
31. On June 24, 1999, the Kentucky Department of Transportation issued an encroachment permit for the Nichols Road Water Main Extension.
32. On June 28, 1999, KTWD began construction of the Nichols Road Water Main Extension.
33. On June 29, 1999, the Public Service Commission advised KTWD by letter that its application for a certificate of public convenience and necessity for the Nichols Road Water Main Extension was deficient. The Public Service Commission requested that KTWD cure these deficiencies no later than July 14, 1999.
34. On July 13, 1999, KTWD requested an extension of time in which cure the deficiencies in its application.
35. On July 16, 1999, KTWD paid \$10,240 to Salmon Construction, Inc. for 1,280 feet of 12-inch water main.
36. On July 27, 1999, KTWD filed additional information with the Public Service Commission to cure the deficiencies

in its initial filing. Upon receipt of this information, the Public Service Commission accepted KTWD's application as "filed."

37. On August 13, 1999, KTWD paid \$66,310.87 to Salmon Construction, Inc. for work performed on the Nichols Road Water Main Extension.

38. On August 17, 1999, a telephone conference between Commission Staff and KTWD's legal counsel was held. At this conference, Commission Staff requested certain information about the proposed water main extension.

39. On September 8, 1999, Commission Staff requested that KTWD confirm in writing that construction on the Nichols Road Water Main Extension had begun.

40. On September 13, 1999, KTWD's legal counsel confirmed in letter to Commission Staff that construction on the Nichols Road Water Main Extension had begun.

41. On September 20, 1999, a telephone conference call between KTWD and Commission Staff was held to discuss inconsistencies in KTWD's application for a certificate of public convenience and necessity.

WHEREAS, KTWD maintains that it did not violate any provision of KRS Chapter 278 or Public Service Commission regulation by collecting customer participation fees and developer fees from those persons connecting to its Cedar Grove Road Water Transmission Main; and

WHEREAS, KTWD acknowledges that the rate increase granted by the Public Service Commission in Case No. 98-398 on June 30, 1999 allows recovery of the annual principal and interest payments on the debt incurred to finance the construction of the Cedar Grove Road Water Transmission Main Project; and

WHEREAS, as a result of said rate increase and in order to resolve all matters involving KTWD currently pending before the Public Service Commission and the Franklin Circuit Court, KTWD is now willing to cease assessing and collecting customer participation fees from prospective customers to connect his or her structure to the Cedar

Grove Road Water Transmission Main, and KTWD is now willing to refund, over a five (5) year period, the customer participation fees it collected from persons connecting to the Cedar Grove Road Water Transmission Main; and

WHEREAS, Commission Staff, KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell desire to settle the issues raised by this proceeding and other proceedings currently pending before the Public Service Commission and Franklin Circuit Court.

NOW, THEREFORE, Commission Staff, KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell agree as follows:

1. Within 20 days of entry of an Order approving this Settlement Agreement, KTWD shall pay to the Kentucky State Treasurer the sum of twenty-five dollars (\$25.00).

2. Within 20 days of entry of an Order approving this Settlement Agreement, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell shall each pay to the Kentucky State Treasurer the sum of one hundred dollars (\$100.00). Such payments shall be made from their personal funds and shall not be made from KTWD's funds. Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell shall not seek reimbursement from KTWD for these payments.

3. Within 20 days of entry of an Order approving this Settlement Agreement, KTWD shall take all actions necessary to dismiss its action in Kentucky Turnpike Water District v. Kentucky Public Service Commission et al., Franklin Circuit Court Civil Action No. 99-CI-01278, and to comply with all terms and provisions of the Public Service Commission's Orders of September 1, 1999 and October 13, 1999 in Public Service Commission Case No. 97-323.

4. Within 20 days of entry of an Order approving this Settlement Agreement, KTWD shall move to dismiss with prejudice its application in Public Service Commission Case No. 99-048.

5. A. Within five years of entry of an Order approving this Settlement Agreement, KTWD shall refund all customer participation fees and developer fees collected from persons connecting any structure to KTWD's Cedar Grove Road Water Transmission Main and not specifically addressed in the Public Service Commission's Orders of September 1, 1999 and October 13, 1999 in Public Service Commission Case No. 97-323.

B. As of the date of this Agreement, KTWD has assessed and collected \$196,350 in customer participation fees from persons connecting to its Cedar Grove Road Water Transmission Main which the Public Service Commission did not specifically address in the Orders of September 1, 1999 and October 13, 1999. A list of each person assessed these charges, his or her address, and the total amount assessed is attached as **Exhibit 1**. KTWD has collected developer fees totaling \$7,200 from Richard Haarman and John Miller d/b/a Cedar Place LLC. Pursuant to the Commission's Order of September 1, 1999 in Case No. 97-323, this sum has already been refunded to these developers as evidenced by KTWD's check number 203 dated January 21, 2000, a copy of which is attached as **Exhibit 2**.

C(1). KTWD shall refund at least \$39,270 of these fees annually until all fees in question have been refunded. The first installment shall be made on or before June 30, 2001. The refund installment for each successive year shall be made no later than June 30 of that year. These refunds shall be made to all affected customers on a pro rata basis. KTWD may, at its option, refund these fees over a lesser period of time.

C(2). No interest shall be paid on the amount to be refunded if KTWD makes the required refunds in a timely manner. In the event KTWD does not strictly comply with paragraph 5C(1) of this Settlement Agreement, however, then KTWD shall pay interest at the rate of twelve (12) per cent per annum from and after the date of entry of an Order approving this Settlement Agreement on all unpaid amounts until all refunds have been paid in full.

D. In the event that KTWD transfers its facilities and assets to an entity whose retail utility operations are not subject to Public Service Commission's jurisdiction, the remaining amount of unrefunded fees shall be refunded no later than 30 days prior to the proposed effective date of such transfer unless KTWD provides adequate assurance to the Public Service Commission that the unrefunded fees will be distributed in accordance with the terms of this Settlement Agreement.

6. Upon dismissal of KTWD's action in Kentucky Turnpike Water District v. Kentucky Public Service Commission et al., Franklin Circuit Court Civil Action No. 99-CI-01278, and KTWD's filing of a motion to dismiss with prejudice its application in Public Service Commission Case No. 99-048, the Public Service Commission shall enter an Order in Public Service Commission Case No. 99-423 requiring KTWD to refund in accordance with the terms of Paragraph 5 of this Settlement Agreement the customer participation fees and developer fees collected from persons connecting to its Cedar Grove Road Water Transmission Main and not specifically addressed in the Public Service Commission's Orders of September 1, 1999 and October 13, 1999 in Case No. 97-323.

7. KTWD shall immediately cease assessing all charges not expressly approved by and on file with the Public Service Commission.

8. This Settlement Agreement resolves all issues pertaining to KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell and arising from the construction of any KTWD water distribution or transmission main prior to October 20, 1999.

9. This Agreement is subject to the acceptance of and approval by the Public Service Commission.

10. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be binding on any signatory.

11. If the Public Service Commission accepts and adopts this Settlement Agreement in its entirety and enters an order in this proceeding to that effect, KTWD, Dan Thibodeaux, George Miller, Elmer Mills, and Raymond Abell shall not apply for rehearing in this proceeding nor bring an action for review of that order.

12. Nothing contained herein is as an admission of a willful violation of any provision of KRS Chapter 278 or Public Service Commission regulation nor is the Public Service Commission's acceptance of this Settlement Agreement a finding of a willful violation of any provision of KRS Chapter 278 or Public Service Commission regulation.

13. This Settlement Agreement is submitted for the purpose of resolving the judicial and administrative proceedings referenced herein and is not binding upon the signatories nor admissible into evidence in any other judicial or administrative proceeding except for those administrative proceedings referenced herein or any administrative or judicial proceeding initiated to enforce the terms of this Settlement Agreement.



IN WITNESS WHEREOF, Commission Staff, KTWD, Dan Thibodeaux, George Miller, Elmer Mills and Raymond Abell have executed this Settlement Agreement the day and year first above written.

STAFF OF PUBLIC SERVICE COMMISSION  
OF KENTUCKY

BY: *Audrey B. W. [Signature]*

TITLE: *Staff Attorney*

KENTUCKY TURNPIKE WATER DISTRICT,  
RAYMOND ABELL, DAN THIBODEAUX,  
GEORGE MILLER, AND ELMER MILLS

BY: *Damon R. Talley*

TITLE: *ATTORNEY*

KENTUCKY TURNPIKE WATER DISTRICT

BY: *[Signature]*

TITLE: CHAIRMAN

*[Signature]*  
DAN THIBODEAUX, INDIVIDUALLY

*[Signature]*  
GEORGE MILLER, INDIVIDUALLY

*[Signature]*  
ELMER MILLS, INDIVIDUALLY

*[Signature]*  
RAYMOND ABELL, INDIVIDUALLY

## EXHIBIT I

No.	First Name	Last Name	Address	City	State	Zip Code
1	CARROLL & FAYE	ARNOLD	6598 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
2	JOHN	BEARD	6123 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
3	MINNIE	BERMAN	5432 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
4	DOYLE	BLEEMEL	408 EVANS LANE	MT WASHINGTON	KY	40047
5	J. D.	BREEDING	7631 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
6	JIM	BROOKS BUILDER, INC.	9000 BLUE LICK RD	LOUISVILLE	KY	40219
7		BURKE REALTY CO., INC.	3402 BURKLAND BLVD	SHEPHERDSVILLE	KY	40165
8		CEDAR GROVE BAPTIST CHURCH	4900 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
9		CEDAR GROVE METHODIST CHURCH	1174 LICKSKILLET DR	SHEPHERDSVILLE	KY	40165
10	BRIAN	CIABURRI	7906 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
11	FRENCH	COLWELL	4708 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
12	PERRY	COOK (1)	6764 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
13	PERRY & DIANE	COOK (2)	6764 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
14	CAROL & ED	CORBETT	8891 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
15	MARK	CORBETT	8623 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
16	EDDIE	CORBETT JR	200 CARTER AVE	LOUISVILLE	KY	40229
17	ERIC & TIFFANY	CORLEY	6505 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
18	ROBERT & PATRICIA	COY	3335 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
19	DENNIS	CUMMINGS	6486 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
20	DARRELL	EVANS	203 RIDGE RD	SHEPHERDSVILLE	KY	40165
21	WAYNE D.	FERGUSON	2831 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
22	LARRY	GREENWELL	8100 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
23	GEORGE	GRESCHEL	160 MCGRUDER LN	SHEPHERDSVILLE	KY	40165
24	CHARLES & VICKI JO	GRIMES	P O BOX 1035	SHEPHERDSVILLE	KY	40165
25	RICHARD	HAARMAN	199 WHITE TAIL CIRCLE	SHEPHERDSVILLE	KY	40165
26	SAM	HARDY	P O BOX 428	SHEPHERDSVILLE	KY	40165
27	LISA	HARSHFIELD	5309 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
28	ROGER	HAYES	3983 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
29	ROBERT C. & IDA	HODGE	8405 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
30	ROBERT	HOERTER	6071 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
31	RICHARD	HUFF	110 RYAN PATRICK DR	SHEPHERDSVILLE	KY	40165
32	LOWELL & JUDY	JACKSON	7507 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
33	VIRGIL	JACKSON	P O BOX 304	SHEPHERDSVILLE	KY	40165
34	RONNIE & PEGGY	JOBE	4608 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
35	JOSEPH	KAYS	5360 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
36	TED & GAYLE	KORFHAGE	350 MOONEY LN	SHEPHERDSVILLE	KY	40165
37	THOMAS	LEACH	8198 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
38	RANDY & BECKY	LEWIS	6849 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
39	M. JEAN	LEWIS	160 FLINTSTONE CT	SHEPHERDSVILLE	KY	40165
40	JERRY	LIKENS	233 SYMMETRIC ST	LOUISVILLE	KY	40229
41	MARTHA D.	MADDEN	5273 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
42	ROBERT & BRENDA	MATHENY	6115 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
43	ALAN & DONNA	MATTINGLY	4075 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
44	ROBERT & SARAH	MCDADE	2185 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165

## EXHIBIT 1

No.	First Name	Last Name	Address	City	State	Zip Code
45	JAMES A.	MILES	4943 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
46	JOHN	MILLER (1)	289 WHITE TAIL CIRCLE	SHEPHERDSVILLE	KY	40165
47	JOHN	MILLER (2)	289 WHITE TAIL CIRCLE	SHEPHERDSVILLE	KY	40165
48	J.	MILLER BUILDERS	289 WHITE TAIL CIRCLE	SHEPHERDSVILLE	KY	40165
49	PAUL	MONTGOMERY	4019 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
50	TOM	NALLEY	3402 HARDWOOD FOREST DR	LOUISVILLE	KY	40214
51	JUDY	NEWSOME	6647 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
52	GOBEL	NEWSOME	302 ARNOLD LN	SHEPHERDSVILLE	KY	40165
53	PAUL & TEATTA	PARSLEY	3747 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
54	STEVE	PLENGE	2340 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
55	OTIS RAY	RATLIFF	6094 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
56	KENNETH R.	ROUTON	6634 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
57	WAYNE E.	SHAFFER	5503 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
58	PEGGY	SIMMONS	5871 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
59	LEWIS & DARLENE	SKIDMORE	3681 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
60	DONALD & CHANDRA	SMITH	107 RYAN PATRICK DR	SHEPHERDSVILLE	KY	40165
61	ROBERT	SPARKS	6885 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
62	WILLIE	STARGEL	1146 WOODSDALE RD	SHEPHERDSVILLE	KY	40165
63	AL	STRAUB	5328 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
64	DAVID L.	TAYLOR	201 TERRY BLVD	LOUISVILLE	KY	40229
65	TONY	THOMAS	2607 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
66	EVERETT & PAT	TROUTMAN	7586 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
67	JAMES G.	VINCENT	4820 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
68	DALE & CINDY	WARREN	4901 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
69	AGNES	WEBB	6023 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
70	DANIEL & THEORA	WELLER	2761 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
71	KEITH & DOTTIE	WHITE	2636 BELLS MILL RD	SHEPHERDSVILLE	KY	40165
72	HAROLD & MARIA	WHITESIDE	7936 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
73	JANET	WIERWILLE	5239 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
74	CHARLES B.	WOLF JR	4981 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
75	DAVID & STEPHANIE	WOODS	5760 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
76	BARRY & LOIS	WOODS	4535 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165
77	JUDY & ALLEN	YOUNG	4736 CEDAR GROVE RD	SHEPHERDSVILLE	KY	40165

EACH OF THE ABOVE LISTED PERSONS OR ENTITIES PAID A CUSTOMER CONTRIBUTION FEE IN THE AMOUNT OF \$2,550 FOR CONNECTING TO THE CEDAR GROVE ROAD WATER TRANSMISSION MAIN. THE TOTAL AMOUNT COLLECTED WAS \$196,350 (77 X \$2,550 = \$196,350).

EXHIBIT 2

73-110/839 203

① Date 1-21-00

**KY TURNPIKE WATER DISTRICT  
IMPACT FEE ACCOUNT**  
3396 BURKLAND BLVD.  
SHEPHERDSVILLE, KY 40165

Pay to the Order of Cedar Place LLC \$ 7200<sup>00</sup>

Seven Thousand Two Hundred Dollars 00/100 Dollars

**FIRST CITIZENS BANK**  
ELIZABETHTOWN, KY  
RADCLIFF, KY - SHEPHERDSVILLE, KY

MONEY MARKET ACCOUNT

7,200.00  
Carol Joney

For Cps #136 + 139 refund of developer fees

⑈083901100⑈0203⑈8609209⑈ ⑈0000720000⑈

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
MAY 3 0 2000  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE  
ASSESSMENT OF CUSTOMER  
PARTICIPATION FEES BY KENTUCKY  
TURNPIKE WATER DISTRICT

CASE NO. 99-423

**Motion for Continuance**

\*\*\*\*\*

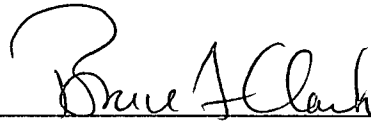
Come Kentucky Turnpike Water District, F. Raymond Abell, Dan Thibodeaux, George Miller, and Elmer Mills (collectively "Kentucky Turnpike"), by counsel, and respectfully move for a continuance in this proceeding. On May 10, 2000, the Public Service Commission ("PSC" or "the Commission") set a hearing date for this proceeding and established deadlines for the filing of direct and rebuttal testimony.

In the interim, counsel for Kentucky Turnpike and counsel for the Commission have attempted to draft a settlement agreement that would resolve all matters – including this proceeding – currently pending between the PSC and Kentucky Turnpike. Counsel for Kentucky Turnpike expects the settlement proposal will be submitted for the full Commission's review by the end of this week.

In light of these settlement developments, Kentucky Turnpike respectfully requests a continuance of the hearing date and the testimony deadlines. Currently, the parties are scheduled to file direct testimony on June 1, 2000. A short continuance of this deadline will permit the Commission to review the settlement proposal. If the Commission adopts the settlement

agreement, this proceeding will be dismissed.

Accordingly, it is in the interests of *all the parties* to this proceeding that the matter be continued until such time as the Commission has reviewed the anticipated settlement agreement. If the Commission adopts the settlement agreement, this proceeding will be dismissed and there will be no need to reschedule the hearing or the deadlines for filing testimony. If the Commission does not adopt the settlement agreement, Kentucky Turnpike requests that the parties be granted a short period of time to prepare testimony and conduct the hearing.



---

Bruce F. Clark

Jason P. Thomas

STITES & HARBISON

400 West Market Street, Suite 1800

Louisville, Kentucky 40202-3352

Telephone: (502) 587-3400

COUNSEL FOR KENTUCKY TURNPIKE  
WATER DISTRICT, F. RAYMOND ABELL (IN  
HIS CAPACITY AS DISTRICT MANAGER),  
DAN THIBODEAUX (IN HIS CAPACITY AS  
COMMISSIONER), ELMER MILLS (IN HIS  
CAPACITY AS COMMISSIONER), AND  
GEORGE MILLER (IN HIS CAPACITY AS  
COMMISSIONER)

**Certificate of Service**

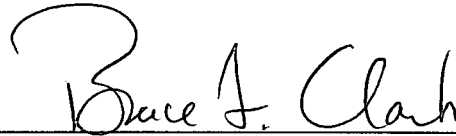
I hereby certify that a copy of the foregoing was served via facsimile (where available) and by first class mail, postage prepaid, on this 30th day of May, 2000, upon:

Hon. John W. Wooldridge  
278 Frank E. Simon Ave.  
P.O. Box 670  
Shepherdsville, KY 40165  
Facsimile 502-543-2286

Charles R. Smith  
1111 Ridge Road  
Shepherdsville, KY 40165

Hon. David A. Pike  
Hon. F. Keith Brown  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville, KY 40165  
Facsimile 502-543-4410

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville, KY 40165



---

COUNSEL FOR KENTUCKY TURNPIKE  
WATER DISTRICT



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

May 10, 2000

To: All parties of record

RE: Case No. 1999-423

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/sh  
Enclosure



F. Raymond Abell  
District Manager  
Kentucky Turnpike Water District  
Division I  
3396 Burkland Boulevard  
Shepherdsville , KY 40165

Gerald P. Burke  
President  
Burke Realty Company, Inc.  
3402 Burkland Blvd.  
Shepherdsville , KY 40165

Hon. John W. Wooldridge  
278 Frank E. Simon Ave.  
P.O. Box 670  
Shepherdsville , KY 40165

Charles R. Smith  
1111 Ridge Road  
Shepherdsville , KY 40165

Honorable David A. Pike  
Honorable F. Keith Brown  
Attorneys for Miller & Haarman  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville , KY 40165

Hon. Bruce F. Clark  
Hon. Jason P. Thomas  
STITES & HARBISON  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602 0634

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville , KY 40165

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT ON )  
CUSTOMER PARTICIPATION FEES BY KENTUCKY ) CASE NO. 99-423  
TURNPIKE WATER DISTRICT )

ORDER

The Commission having ordered that this matter would stand submitted for decision unless a party requested a hearing, and Kentucky Turnpike Water District having subsequently requested a hearing in this matter,

IT IS HEREBY ORDERED that:


1. A formal hearing in this matter shall be held on June 29, 2000 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, and shall continue until completed.
2. Any party wishing to present testimony in this proceeding shall, on or before June 1, 2000, file with the Commission in verified form the direct testimony of each witness that it expects to call at the formal hearing.
3. Any other party wishing to present rebuttal testimony in this proceeding shall, or before June 15, 2000, file with the Commission in verified form the rebuttal testimony of each witness that it expects to call at the formal hearing.
4. Direct examination of witnesses shall be limited to the authentication and adoption of that written testimony. No summarization of written testimony by the witness shall be permitted.
5. No opening statements shall be made at the hearing in this matter.

6. Any party may, within 15 days of the filing of the hearing transcript with the Commission, submit a written brief. Briefs shall not exceed 25 pages in length.

Done at Frankfort, Kentucky, this 10th day of May, 2000.

By the Commission

ATTEST:

  
Executive Director

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 08 2000

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE  
ASSESSMENT OF CUSTOMER  
PARTICIPATION FEES BY KENTUCKY  
TURNPIKE WATER DISTRICT

CASE NO. 99-423

**KENTUCKY TURNPIKE WATER DISTRICT'S WRITTEN COMMENTS AND  
REQUEST FOR HEARING AND BRIEFING SCHEDULE**

In an order dated February 22, 2000, the Public Service Commission ("PSC" or "the Commission") directed the parties to make a written request for a hearing in this matter if any of the parties desired a hearing.

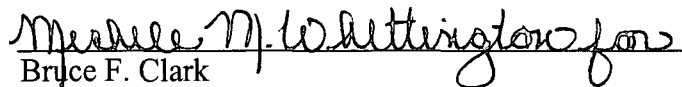
Kentucky Turnpike Water District ("Kentucky Turnpike" or "the District") requests a hearing in this matter and requests the opportunity to file written briefs. The issues to be addressed are whether Kentucky Turnpike properly collected fees for the construction of facilities. PSC regulation and Kentucky Turnpike's tariff permit the District to require customers to pay for the cost of any extension of service that exceeds 50 feet per new customer. See 807 KAR 5:066, Section 11.

Kentucky Turnpike is currently assembling records of customer participation fees collected for extensions of service *and* the total cost of each of those extensions. Kentucky Turnpike will then be able to compare (on a project-by project basis) the contributions made by customers, the contribution of Kentucky Turnpike, and the total cost of project.

In any event, all customer participation fees were imposed and collected equitably with the agreement of each of the customers. Without the contributions of the customers, the District simply would not have been able to construct the extensions. In this circumstance, the fees paid

by the customers were fair, just, and reasonable. Any order requiring a refund of those fees would increase the administrative and borrowing costs of the District and would likely result in an increase in rates. Because there was no discrimination and because the customer participation fees were fairly spread among the customers, who would have otherwise not received service, a refund is improper. Of course, a refund will additionally be improper if the District (as the evidence will show) paid for the cost of constructing at least 50 feet of the extension per customer.

Kentucky Turnpike anticipates that it will call the District Manager (F. Raymond Abell), bookkeeper (Viola Toney), and its outside accountant (Steve Freeman). Kentucky Turnpike reserves the right to amend its witness list. Furthermore, Kentucky Turnpike reserves the right to submit written briefs of the issues, which may incorporate and expand on its written comments made in this filing.

  
Bruce F. Clark  
Jason P. Thomas  
STITES & HARBISON  
400 West Market Street, Suite 1800  
Louisville, Kentucky 40202-3352  
Telephone: (502) 587-3400  
COUNSEL FOR KENTUCKY TURNPIKE  
WATER DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing KENTUCKY TURNPIKE WATER DISTRICT'S REQUEST FOR HEARING AND BRIEFING SCHEDULE was served by first class mail, postage prepaid, on this 8th day of March, 2000 upon:

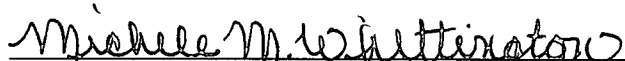
Hon. John W. Wooldridge  
278 Frank E. Simon Ave.  
P.O. Box 670  
Shepherdsville, KY 40165

Charles R. Smith  
1111 Ridge Road  
Shepherdsville, KY 40165

Hon. David A. Pike  
Hon. F. Keith Brown  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville, KY 40165

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville, KY 40165

Gerald P. Burke  
President  
Burke Realty Company, Inc.  
3402 Burkland Blvd.  
Shepherdsville, KY 40165

  
\_\_\_\_\_  
COUNSEL FOR KENTUCKY TURNPIKE  
WATER DISTRICT

RECEIVED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

MAR 08 2000

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT OF )  
CUSTOMER PARTICIPATION FEES BY ) Case No. 99-423  
KENTUCKY TURNPIKE WATER DISTRICT )

**BURKE REALTY COMPANY, INC.'S  
COMMENT PER 2/22/00 ORDER OF PSC**

\*\*\*\*\*

Comes Burke Realty Company, Inc.<sup>1</sup> (hereinafter "Burke Realty"), by counsel, and hereby timely files this "Comment" in compliance with a February 22, 2000 Order of the Public Service Commission (hereinafter "Commission") in order to preserve its rights to refund of any illegally assessed customer participation fees which it or its owners, officers, or directors may have paid to Kentucky Turnpike Water District.

Burke Realty participated in Commission Case No. 97-323 as Complainant as a result of certain impact fees (totaling \$1,800 per lot) referenced in the pleadings in such action. In connection with its Final Order in such action, the Commission established this Case No. 99-423. The Commission's Order of February 22, 2000 provided Burke Realty with the opportunity to request a hearing and to comment in regard to a proposed refund of customer participation fees. Generally, such customer participation fees were in the amount of \$2,550 per connection.

Burke Realty does not request a hearing in Case No. 99-423. Essentially, Burke Realty believes that the incorporated record of Case No. 97-323 and 99-048 contain sufficient factual

---

<sup>1</sup>Burke Realty Company, Inc. assumes it is a party to this Case 99-423 because of a "rollover" effect from Case 97-323. Burke Realty never made a motion to specifically intervene in this Case 99-423. However, because the Commission served it with Orders in the action, it must assume it is considered a party.

information for the Commission to make its final ruling on any refunds. The Commission should note Burke Realty's "Complainant's Reply and Objection to Kentucky Turnpike Water District's Response to Show Cause Order" dated October 7, 1999 and filed in Case No. 97-323. This filing shows the links between the issues in Case 97-323 and Case 99-423 and their effects on Burke Realty.

Burke Realty's comment on the proposed refund is simple. Since this proceeding is in the nature of a show cause action, it appears that the Commission has concluded that the assessment and collection of certain customer participation fees may have been illegal. If such customer participation fees were not lawfully assessed, then it is difficult to see how refund could be avoided.

Burke Realty does not believe any plea of purported financial hardship for the District should prevent refund of the customer participation fees. Essentially, circumstances have changed since the customer participation fees were imposed initially. First, the District's Division II customers were subjected to a 15% rate increase in Case No. 98-398 per PSC Order dated June 30, 1999. Second, the Commission has approved in Case No. 99-474 the issuance of \$1,685,000 of water works revenue bonds to permanently finance the Cedar Grove Road main. Third, there has been extensive media publicity about the District being eligible for a \$400,000 federal grant to replace a pumping station and certain pipes related to the Cedar Grove Road main. (See "Neighborhoods" *Courier Journal*, Nov. 17, 1999.) With all of these other sources of funding, it is difficult to see why the District needs to retain any illegally assessed customer participation fees.

Any plea of hardship is further suspect because the District seems to have funds to proceed represented by private counsel in litigation against the Commission in Franklin Circuit Court Civil Action 99-CI-01278 (an action arising from Case No. 97-323). Moreover, as revealed in PSC Case No. 98-398 (rate increase case), the District had paid up through the Spring of 1999 in excess of



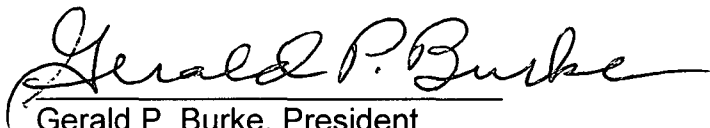
\$100,000 to its attorneys at Stites and Harbison. Significant additional legal fees may have been paid since Spring of 1999. A July 21, 1999 affidavit from the Bullitt County Attorney filed in Case No. 98-398 states that *"I have no personal recollection of being asked to serve as the District's legal counsel, nor, consequently, do I have a personal recollection of refusing to serve as the District's legal counsel."* Since the District could have been using the County Attorney for legal representation for free per KRS 74.030, but did not do so, it is difficult to see how they could now make any claim that it was reasonable to pay private counsel over \$100,000, but that funds are not available to refund illegal fees to the customers of Bullitt County.

Burke Realty or its officers, directors, or shareholders have paid Kentucky Turnpike Water District a customer participation fee for connection to the Cedar Grove Road Main. Accordingly, such payment is requested to be refunded. Moreover, the Commission is asked to address whether a reasonable amount of interest should be added on to any refund amounts.

The Commission is asked to resolve the refund issues in this Case No. 99-423 prior to any merger of the Kentucky Turnpike Water District with the Louisville Water Company as such potential merger has been reported recently in the news media. It is Burke Realty's understanding that the Commission would lose jurisdiction over the refund issues after the merger, because Louisville Water Company is a municipal utility. Consequently, the Commission should not allow this matter to become moot by merger to the disadvantage of persons who may have paid what the Commission considers to be illegally assessed fees to Kentucky Turnpike Water District.

VERIFICATION

Comes Gerald P. Burke, as President of Burke Realty Company, Inc., and states and affirms under oath that he has read the contents of the within pleading and hereby affirms that they are true and accurate except as to those items alleged upon information and belief, and to those items they believe the same to be true.



Gerald P. Burke, President  
Burke Realty Company, Inc.

STATE OF KENTUCKY  
COUNTY OF BULLITT

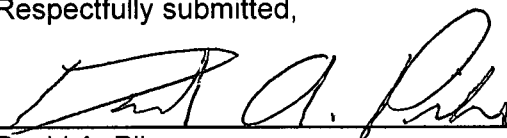
Subscribed to and sworn to and acknowledged before me by Gerald P. Burke as officer and agent of Burke Realty Company, Inc. on this BH day of March 2000. My commission expires: 4/19/03.

  
Notary Public, State at Large

## CERTIFICATE OF SERVICE

This is to certify that the within was mailed by U.S. Postal Service first class mail, postage prepaid, to: Bruce Clark and Jason P. Thomas, Stites & Harbison, 421 West Main Street, P.O. Box 634, Frankfort, KY 40602-0634 (counsel for Kentucky Turnpike Water District); Charles R. Smith, 1111 Ridge Road, Shepherdsville, KY 40165 (Intervener); Jerry Wuetcher, Staff Counsel, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, KY 40602 (counsel and team leader for Public Service Commission); and Louis and Rita Manning, 185 Jackie Way, Shepherdsville, KY 40165, on this 8th day of March 2000.

Respectfully submitted,



David A. Pike  
and



F. Keith Brown  
Pike Legal Group  
200 S. Buckman Street  
P. O. Box 369  
Shepherdsville, KY 40165  
Telephone: (502) 955-4400  
Telefax: (502) 543-4410  
E-Mail: PikeLegal@AOL.com  
ATTORNEYS FOR  
BURKE REALTY COMPANY, INC.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 08 2000

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT OF )  
CUSTOMER PARTICIPATION FEES BY ) Case No. 99-423  
KENTUCKY TURNPIKE WATER DISTRICT )

JOHN MILLER AND RICHARD HAARMAN'S  
COMMENT PER 2/22/00 ORDER OF PSC

\*\*\*\*\*

Come the Interveners<sup>1</sup> John Miller and Richard Haarman (hereinafter "Interveners"), by counsel, and hereby timely file this "Comment" in compliance with a February 22, 2000 Order of the Public Service Commission (hereinafter "Commission") in order to preserve their rights to refund of any illegally assessed customer participation fees which they may have paid to Kentucky Turnpike Water District.

The Interveners participated in Commission Case No. 97-323 as intervening parties as a result of certain impact fees (totaling \$1,800 per lot) referenced in their pleadings in such action. In connection with its Final Order in such action, the Commission established this Case No. 99-423. The Commission's Order of February 22, 2000 provided the Interveners with the opportunity to request a hearing and to comment in regard to a proposed refund of customer participation fees. Generally, such customer participation fees were in the amount of \$2,550 per connection.

The Interveners do not request a hearing in Case No. 99-423. Essentially, Interveners believe that the incorporated record of Case No. 97-323 and 99-048 contain sufficient factual

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<sup>1</sup>Interveners assume they are parties to this Case 99-423 because of a "rollover" effect from Case 97-323. Interveners never made a motion to specifically intervene in this Case 99-423. However, because the Commission has served them with Orders in the action, they must assume they are considered parties to Case 99-423.

information for the Commission to make its final ruling on any refunds. However, Interveners suggest that any refund Order entered by the Commission be broad enough to encompass customer participation fee payments made by any person or entity to the District even if the documentation supplied by the District to date in this proceeding did not include such evidence of payments. Interveners would not want to be left out of the refund opportunity if evidence of their payments was missing from the District's filings, but they were able to produce documentation showing they had actually made such payments.

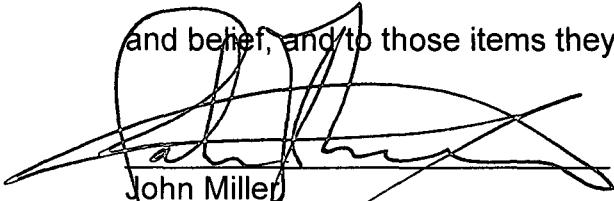
Interveners' comment on the proposed refund is simple. Interveners assumed that any monies they paid to Kentucky Turnpike Water District were lawfully assessed with full Commission approval to the extent necessary. However, it now appears that the Commission has concluded that the assessment and collection of such fees may have been illegal. If such customer participation fees were not lawfully assessed, then it is difficult to see how refund could be avoided.

Interveners and/or entities which they control have paid several such participation fees to Kentucky Turnpike Water District for connection to the Cedar Grove Road Main. Accordingly, Interveners request to receive refunds of such fees as they have paid. Moreover, the Commission is asked to address whether a reasonable amount of interest should be added on to any refund amounts.

The Commission is asked to resolve the refund issues in this Case No. 99-423 prior to any merger of the Kentucky Turnpike Water District with the Louisville Water Company as such potential merger has been reported recently in the news media. It is Interveners' understanding that the Commission would lose jurisdiction over the refund issues after the merger, because Louisville Water Company is a municipal utility. Consequently, the Commission should not allow this matter to become moot by merger to the disadvantage of persons who may have paid what the Commission considers to be illegally assessed fees to Kentucky Turnpike Water District.

**INTERVENORS' VERIFICATION**

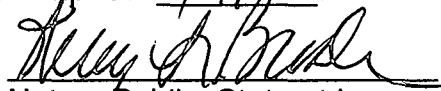
Come the affiants John Miller and Richard Haarman, Intervenors herein, and state and affirm under oath that each has read the contents of the within pleading and hereby affirm that they are true and accurate except as to those items alleged upon information and belief, and to those items they believe the same to be true.

  
John Miller

  
Richard Haarman


STATE OF KENTUCKY  
COUNTY OF BULLITT

Subscribed to and sworn to and acknowledged before me by John Miller on this 6<sup>th</sup> day of March 2000. My commission expires: 4/19/00.

  
Notary Public, State at Large

STATE OF KENTUCKY  
COUNTY OF BULLITT

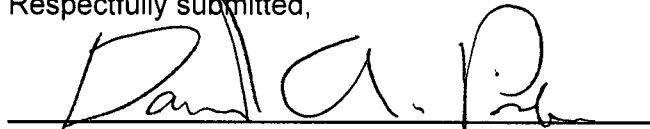
Subscribed to and sworn to and acknowledged before me by Richard Haarman on this 6<sup>th</sup> day of March 2000 My commission expires: 4/19/00.

  
Notary Public, State at Large

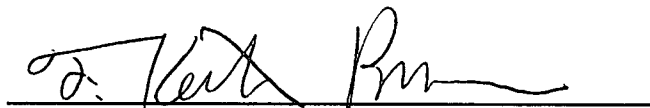
## CERTIFICATE OF SERVICE

This is to certify that the within was mailed by U.S. Postal Service first class mail, postage prepaid, to: Bruce Clark and Jason P. Thomas, Stites & Harbison, 421 West Main Street, P.O. Box 634, Frankfort, KY 40602-0634 (counsel for Kentucky Turnpike Water District); Charles R. Smith, 1111 Ridge Road, Shepherdsville, KY 40165 (Intervener); Jerry Wuetcher, Staff Counsel, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, KY 40602 (counsel and team leader for Public Service Commission) and Louis and Rita Manning, 185 Jackie Way, Shepherdsville, KY 40165 on this 8th day of March 2000.

Respectfully submitted,



David A. Pike  
and



F. Keith Brown  
Pike Legal Group  
200 S. Buckman Street  
P. O. Box 369  
Shepherdsville, KY 40165  
Telephone: (502) 955-4400  
Telefax: (502) 543-4410  
E-Mail: PikeLegal@AOL.com  
ATTORNEYS FOR INTERVENERS  
JOHN MILLER AND RICHARD HAARMAN



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

February 22, 2000

To: All parties of record

RE: Case No. 1999-423

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT ON )  
CUSTOMER PARTICIPATION FEES BY KENTUCKY ) CASE NO. 99-423  
TURNPIKE WATER DISTRICT )

ORDER

On September 1, 1999, the Commission in Case No. 99-323<sup>1</sup> directed Kentucky Turnpike Water District ("Kentucky Turnpike") to show cause why it should not be required to refund all customer participation fees collected from customers who connected to the Cedar Grove Road Transmission Main. The Commission's action followed the receipt and adjudication of complaints regarding Kentucky Turnpike's assessment of charges and fees not contained in the utility's published rate schedules. The Commission subsequently established this docket to investigate Kentucky Turnpike's collection of customer participation fees, its retention of such fees and all related matters. Those issues were then transferred from Case No. 97-323 to this docket.

Although afforded the opportunity to request a hearing in this matter, Kentucky Turnpike has not expressly done so.<sup>2</sup> To ensure that Kentucky Turnpike and all parties who have intervened in this matter have adequate opportunity to present evidence and

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<sup>1</sup> Case No. 97-323, Burke Realty Company v. Kentucky Turnpike Water District (September 1, 1999).

<sup>2</sup> On October 1, 1999, Kentucky Turnpike responded to the Commission's Order to Show Cause. In its response, it made no express request for a hearing on whether it should be required to refund customer participation fees collected from Cedar Grove Transmission Main customers.

argument on the collection and potential refund of the customer participation fees, the Commission finds that all parties should be permitted 15 days in which to request a hearing in this matter or to submit argument or comment on the proposed refund of the customer participation fees. If no requests for hearing are received by that date, the Commission will consider the matter submitted for decision.

The Commission notes that the issue of Kentucky Turnpike's collection of customer participation fees has been raised and reviewed in Case No. 99-048<sup>3</sup> and that the record developed in that proceeding would assist the Commission in addressing the principal issues in this case. Accordingly, we find that the record of Case No. 99-048 should be incorporated by reference into the record of this proceeding.

IT IS THEREFORE ORDERED that:

1. Any party to this proceeding wishing a hearing in this matter shall submit its written request for such hearing within 15 days of the date of this Order. Such request shall list the issues that the party wishes to address and the witnesses that he expects to call.

2. If no written requests for hearing are received by the Commission within 15 days of this Order, this matter shall stand submitted for decision.

3. Those parties wishing to submit written comments on the proposed refund of the customer anticipation fees shall submit such comments within 15 days of the date of this Order.

4. The record of Case No. 99-048 is incorporated by reference into the record of this proceeding.

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<sup>3</sup> Case No. 99-048, The Contract Filing of Kentucky Turnpike Water District with Customers Located in the Cedar Grove Road Area for the Supply of Water.

Done at Frankfort, Kentucky, this 22nd day of February, 2000.

By the Commission

ATTEST:

  
Executive Director



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

December 13, 1999

To: All parties of record

RE: Case No. 1999-423

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

F. Raymond Abell  
District Manager  
Kentucky Turnpike Water District  
Division I  
3396 Burkland Boulevard  
Shepherdsville , KY 40165

Gerald P. Burke  
President  
Burke Realty Company, Inc.  
3402 Burkland Blvd.  
Shepherdsville , KY 40165

Hon. John W. Wooldridge  
278 Frank E. Simon Ave.  
P.O. Box 670  
Shepherdsville , KY 40165

Charles R. Smith  
1111 Ridge Road  
Shepherdsville , KY 40165

Hon. David A. Pike  
Hon. F. Keith Brown  
Pike Legal Group  
200 South Buckman Street  
P.O. Box 369  
Shepherdsville , KY 40165

Hon. Bruce F. Clark  
Hon. Jason P. Thomas  
STITES & HARBISON  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602 0634

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville , KY 40165

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT )  
ON CUSTOMER PARTICIPATION FEES BY ) CASE NO. 99-423  
KENTUCKY TURNPIKE WATER DISTRICT )

O R D E R

This matter arising upon the motion for intervention of Louis and Rita Manning, filed December 3, 1999, and it appearing to the Commission that the Mannings have not requested full intervention and that limited intervention will not unduly delay or disrupt the proceedings or prejudice the rights of the original parties, and this Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

1. The motion of Louis and Rita Manning to intervene is granted.
2. The Mannings shall be entitled to the full rights of a party and shall be served with the Commission's Orders, but shall not be served with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties and shall not be certified as a party for the purpose of receiving service of any petitions for rehearing or petition for judicial review.
3. The Mannings shall serve on all parties a copy of any and all documents filed by them with the Commission.

Done at Frankfort, Kentucky, this 13th day of December, 1999.

By the Commission

ATTEST:

  
Executive Director

December 1, 1999

RECEIVED  
DEC 03 1999  
PUBLIC SERVICE  
COMMISSION

Helen Helton  
Executive Director, PSC  
P.O. Box 615  
Frankfort, Ky. 40602

Dear Ms. Helton,

I have been talking to Mr. Geoghegan about a complaint on the amount of the assessments that Kentucky Turnpike is charging for new service. He told me that you were turning it over to your lawyers, and that we should request to be intervenes in the case. The case number is 99-423 and we would definitely want to be involved. I will include address and phone number, should you need to contact us.

Thank You

*Louis + Rita Manning*

Louis and Rita Manning  
185 Jackie Way  
Shepherdsville, Ky 40165  
Ph. 502-543-6090



**UAW LEGAL SERVICES PLANS**

**UAW-GM UAW-Ford UAW-Chrysler**

**1939 Goldsmith Lane, Suite 117, Louisville, KY 40218-2006**

**Phone: (502) 456-4222 Fax: (502) 458-3457**

November 29, 1999

RECEIVED  
DEC 01 1999  
PUBLIC SERVICE  
COMMISSION

Ms. Helen Helton  
Executive Director  
PUBLIC SERVICE COMMISSION  
P.O. Box 615  
Frankfort, KY 40602.

Re: Kentucky Turnpike Water District v. Glenn Metcalf  
Your file No. 99-~~423~~ 423  
My file No. 1999-181-03459

Dear Ms. Helton:

We represent Mr. Glenn Metcalf. Mr. Metcalf was recently sued by the Kentucky Turnpike Water District in Bullitt County District Court. The Water District claims that Mr. Metcalf owes a \$4,000 connection fee for residential service at 3985 Brooks Hill Road in Brooks Kentucky. Mr. Metcalf was never informed of the charge before connecting and never signed any agreement whatsoever to pay the \$4,000. Enclosed are copies of the Complaint and Answer that were filed in the civil action.

I understand that there is a pending investigation into similar claims by the Kentucky Turnpike Water District against other customers. Would you please intervene in this matter and include Mr. Metcalf's case in your investigation.

If you have any questions, please call. Thank you for your assistance.

Sincerely,



Michael J. Forbes  
Attorney at Law

MJF/emb  
Enclosures  
Cc: Glenn N. Metcalf

COMMONWEALTH OF KENTUCKY  
BULLITT DISTRICT COURT  
CASE NO. 99-~~CR~~ 00556

FILED

AUG 17 1999

BULLITT CIRCUIT/DISTRICT CLERK  
DC

KENTUCKY TURNPIKE WATER DISTRICT  
3396 Burkland Boulevard  
Shepherdsville, Kentucky 40165

PLAINTIFF

VS.

COMPLAINT

GLENN METCALF  
3985 Brooks Hill Road  
Brooks, Kentucky 40109

DEFENDANT

Comes the Plaintiff and for its Complaint states as follows:

1. The Kentucky Turnpike Water District is a public utility established pursuant to Kentucky Revised Statute 74.010 et seq.

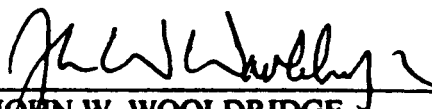
2. That the Plaintiff was established for the purposes of operating a water system located in Bullitt County, Kentucky, and in so doing is further authorized to enter into contracts to extend mains to provide water to unserved areas of the county.

3. That in so doing that the Turnpike was requested to extend water mains in the Brooks Hill Road area by numerous residents who would be required to fund the extension of the water mains. That in the extension it was required of each customer who wished to receive water to pay the sum of \$4,000.00, and all customers who received water from the water main so extended did in fact either pay the sum of \$4,000.00 or did sign a promissory note to pay \$4,000.00. That pursuant to the rules and regulations of The Public Service Commission the Water District did advance monies and materials and labor to assist in the extension of these water mains.

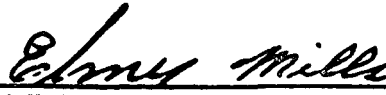
4. That pursuant to rules and regulations of The Public Service Commission the initial customers who paid for and funded this extension are entitled to receive a rebate as new customers receive water from the lines extended. The rebate is for a 10 year period from the date of the completion of the project. That thereafter the defendant did pay to Louisville Water Company a meter fee and received service for water and has continued to receive service for water from the mains extended, but has failed and refused to pay the \$4,000.00 that the initial customers paid for these lines, and for which said sum would be credited toward the total project cost, and thereafter upon the total project being funded all customers would be entitled to a rebate as additional customers receive service from the lines.

5. That the District has made a demand of the defendant for the payment of the money and he has refused, and the District has no alternative but on behalf of the customers to prosecute the action to collect the funds and to properly credit said sums toward the total project cost to the benefit of all customers who initially funded this project.

WHEREFORE, the Plaintiff demands that it recover from the Defendant the sum of \$4,000.00, plus its costs herein expended, and for all other order and relief to which it may appear entitled.

  
\_\_\_\_\_  
JOHN W. WOOLDRIDGE  
278 Frank E. Simon Avenue-P.O. Box 670  
Shepherdsville, KY 40165  
Telephone: (502) 543-2286 955-6902  
COUNSEL FOR PLAINTIFF

The undersigned Commissioners of The Kentucky Turnpike Water District having read the within Complaint do hereby adopt and affirm the allegations contained herein.

  
\_\_\_\_\_  
ELMER MILLS

  
\_\_\_\_\_  
DAN THIBODEAUX

  
\_\_\_\_\_  
GEORGE R. MILLER

noted to be in  
accord to the

FILED

SEP 07 1999

BULLITT CIRCUIT DISTRICT CLERK  
Plaintiff

COMMONWEALTH OF KENTUCKY  
BULLITT DISTRICT COURT  
NO. 99-C-00556

KENTUCKY TURNPIKE  
WATER DISTRICT

v.

ANSWER AND  
AFFIRMATIVE  
DEFENSES

GLENN METCALF

Defendant

\*\*\*\*\*

Affirmative Defenses

Comes the Defendant, Glenn Metcalf, by counsel, and for his Answer to the Plaintiff's Complaint, states as follows:

1. The Plaintiff fails to state a cause of action against this Defendant upon which relief can be granted.
2. Concerning the allegations contained in paragraphs one (1) and two (2) of the Plaintiff's Complaint, this Defendant is without information sufficient to form a belief as to the truth of the averments and they are, therefore, denied.
3. Concerning the allegations contained in paragraph three (3) of the Plaintiff's Complaint, Defendant expressly denies that he that he signed a promissory note to pay \$4,000 in order to connect to the subject water line and avers that he was never notified in any way of a \$4,000 water connection charge, prior to having the Louisville Water Company make connection to the line. Concerning the rest and remainder of the allegations contained in paragraph three (3), this Defendant is without information sufficient to form a belief as to the truth of the averments and they are, therefore, denied.
4. Concerning the allegations contained in paragraph four (4) of the Plaintiff's Complaint, Defendant admits that he did pay the Louisville Water Company a meter fee

and that he received service for water. Defendant expressly denies the rest and remainder of the allegations contained in paragraph four (4).

5. Defendant denies the allegations contained in paragraph five (5) of Plaintiff's Complaint and specifically avers that he has only received an informal telephone call requesting payment on behalf of the Kentucky Turnpike Water District; this Defendant has never received any invoice or documentation supporting the alleged charges or posting of credits for the "collected funds." Defendant affirmatively avers that he requested documentation, to justify such claim through his attorney, but was provided with nothing. Upon informal review by the Public Service Commission consumer complaint division, he was advised not to pay the \$4,000 claim.

6. All allegations not expressly admitted are hereby denied.

#### **Affirmative Defenses**

Comes the Defendant, Glenn Metcalf, by counsel, and for his Affirmative Defenses to the Plaintiff's Complaint, states as follows:


1. Plaintiff by its acts and conduct is estopped to assert that Defendant, Glenn Metcalf, now owes Plaintiff a \$4,000 connection charge because Plaintiff never gave Defendant any actual or constructive notice of the alleged charge prior, and allowed its principal or agent, the Louisville Water Company, to connect to the water system without objection.

2. At all times relevant, Plaintiff never had proper authority from the Public Service Commission to charge the alleged \$4,000 fee and Defendant did not expressly agree to the charge.

WHEREFORE, Defendant Glenn Metcalf respectfully requests:

1. Plaintiff's Complaint be dismissed with prejudice.
2. Defendant Glenn Metcalf be awarded costs for defending this action.
3. Any and all other relief to which Defendant may appear entitled.
4. A jury trial is demanded on all issues so triable.

Respectfully Submitted,

  
MICHAEL J. FORBES  
UAW-Ford Legal Services Plan  
1939 Goldsmith Lane, Suite 117  
Louisville, KY 40218-2006  
(502) 456-4222

**CERTIFICATE**

I hereby certify that a true copy of the foregoing has been duly served, via first-class United States mail, postage prepaid, this 2<sup>ND</sup> day of SEPTEMBER, 1999 to:

John W. Wooldridge  
278 Frank E. Simon Avenue, P.O. Box 670  
Shepherdsville, KY 40165

  
Michael J. Forbes



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940


October 13, 1999

To: All parties of record

RE: Case No. 99-423

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

  
Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure



F. Raymond Abell  
District Manager  
Kentucky Turnpike Water District  
Division I  
3396 Burkland Boulevard  
Shepherdsville , KY 40165

Gerald P. Burke  
President  
Burke Realty Company, Inc.  
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Shepherdsville , KY 40165

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Shepherdsville , KY 40165

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Hon. F. Keith Brown  
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Hon. Bruce F. Clark  
Hon. Jason P. Thomas  
STITES & HARBISON  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602 0634

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ASSESSMENT ON )  
CUSTOMER PARTICIPATION FEES BY KENTUCKY ) CASE NO. 99-423  
TURNPIKE WATER DISTRICT )

ORDER

On September 1, 1999, the Commission in Case No. 99-323<sup>1</sup> directed Kentucky Turnpike Water District ("Kentucky Turnpike") to show cause why it should not be required to refund all customer participation fees collected from customers who connected to the Cedar Grove Road Transmission Main. The Commission's action followed the receipt and adjudication of complaints regarding Kentucky Turnpike's assessment of charges and fees not contained in the utility's published rate schedules.

On October 13, 1999, the Commission found that, for reasons of judicial and administrative economy, the issues related to Kentucky Turnpike's collection of customer participation fees should be severed from Case No. 97-323 and transferred to a new docket. Accordingly, the Commission establishes this docket to investigate Kentucky Turnpike's collection of customer participation fees, its retention of such fees and all related matters.

IT IS THEREFORE ORDERED that:

1. This docket is established to investigate Kentucky Turnpike's collection of customer participation fees.

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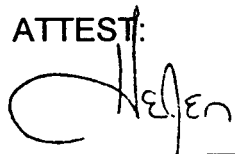
<sup>1</sup> Case No. 97-323, Burke Realty Company v. Kentucky Turnpike Water District (September 1, 1999).

2. The record of Case No. 97-323 is incorporated by reference into the record of this case.

Done at Frankfort, Kentucky, this 13th day of October, 1999.

By the Commission

ATTEST:

  
Helen C. Jefferson

Executive Director