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**GTE Service  
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July 25, 2000

00121-AR

Mr. Martin Huelsmann  
Executive Director  
Public Service Commission  
211 Sower Bldv.  
Frankfort, Kentucky 40601

RECEIVED

JUL 25 2000

PUBLIC SERVICE  
COMMISSION

RE: Resale Agreement Between GTE South Incorporated and  
Direct Communications Corporation

Dear Mr. Huelsmann:

Enclosed for joint filing by the parties with the Kentucky Public Service Commission (Commission) are the original, and six copies, of a Resale Agreement recently executed between GTE South Incorporated and Direct Communications Corporation. Also enclosed is an electronic copy of the Agreement in Microsoft Word 97 format on a 3.5 floppy diskette.

This Agreement is being provided to the Commission for its review and approval.

Please bring this filing to the attention of the Commission, and if there are any questions, please contact me at your convenience.

Yours truly,

A handwritten signature in cursive script that reads "Larry D. Callison".  
Larry D. Callison

Enclosures

c: Mr. Chad Elmore – Direct Communications Corporation

**251/252 AGREEMENT**

**BETWEEN**

**GTE SOUTH INCORPORATED**

**AND**

**DIRECT COMMUNICATIONS CORPORATION**

**FOR THE STATE OF KENTUCKY**

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## **251/252 AGREEMENT**

This 251/252 Agreement (the "Agreement") is effective upon the date of execution by both Parties as contained on the signature page below ("Effective Date"). The Agreement is by and between GTE South Incorporated, with its address for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE") and Direct Communications Corporation, in its capacity as a certified provider of local wireline telecommunication services ("Direct Communications"), with its address for this Agreement at 1980 Apostolic Ridge Rd., Liberty, KY 42539 (GTE and Direct Communications being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the State of Kentucky only (the "State").

### **RECITALS**

**WHEREAS**, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations upon GTE to negotiate in good faith in accordance with Section 252 of the Act, an agreement embodying the terms and conditions of the provision of certain telecommunications services and facilities to Direct Communications and other terms and conditions that are legitimately related to, and constituting a part of, said arrangements; and

**WHEREAS**, pursuant to Section 252(a) of the Act, Direct Communications issued a written request to GTE to enter into said negotiations; and

**WHEREAS**, the Parties completed good faith negotiations that led to the services and facilities arrangements, including all legitimately related terms and conditions, described herein.

**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, and without waiving any reservation of rights set forth herein, GTE and Direct Communications hereby covenant and agree as follows.

**ARTICLE I  
SERVICES AND FACILITIES**

1. Definitions.

Except as otherwise specified herein, the definitions set forth in the Glossary that is attached hereto as Appendix A to Articles I and II shall apply to this Agreement. Additional definitions that are specific to the matters covered in a particular provision may appear in that provision. To the extent that there may be any conflict between a definition set forth on Appendix A and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision and the Article or Attachment in which such provision shall be included.

2. Service and Facility Arrangements.

2.1 Standard Alternatives.

GTE shall provide to Direct Communications the services and/or facilities below pursuant to the designated service attachment (check all that apply):

Interconnection Attachment  
 Resale Attachment  
 UNE Attachment  
 Collocation Attachment

This Agreement consists of the designated services and/or facilities Attachment(s), and with respect to each such Attachment, all terms and conditions set forth in Articles I and II. The terms and conditions in a given Attachment together with all such Article I and II terms and conditions are integrally and legitimately related, and shall govern the provision of the designated services and/or facilities by GTE to Direct Communications.

2.2 Poles, Ducts, Conduits and Rights-of-Way.

To the extent required by the Act, GTE and Direct Communications shall each afford to the other access to the poles, ducts, conduits and ROWs it owns or controls on terms, conditions and prices comparable to those offered to any other entity pursuant to each Party's tariffs and/or standard agreements. Accordingly, if GTE and Direct Communications desire access to the other Party's poles, ducts, or ROWs, GTE and Direct Communications shall adhere to the terms and conditions of the other Party's applicable tariffs and/or execute separate agreements. Direct Communications agrees that pole attachment and conduit occupancy agreements must be executed separately before it makes any attachments to GTE facilities or uses GTE's conduit. Should Direct Communications attempt to make any such attachments to GTE's facilities or to use GTE's conduit without first entering into such separate agreements, as applicable, then such actions shall constitute a breach of this agreement.

2.3 Directory Listings and Directory Distribution.

2.3.1 Separate Agreement. Except as set forth below, Direct Communications will be required to negotiate a separate agreement for directory listings and directory distribution, with GTE's directory publication company.

2.3.2 Supply of Listing Information. Direct Communications agrees to supply GTE on a regularly scheduled basis, at no charge, and in a mutually agreed upon format (e.g. ordering and billing forum developed), all listing information for Direct Communications's subscribers who wish to be listed in any GTE published

directory for the relevant operating area. Listing information will consist of names, addresses (including city, state and zip code) and telephone numbers. Nothing in this Agreement shall require GTE to publish a directory where it would not otherwise do so. Listing inclusion in a given directory will be in accordance with GTE's solely determined directory configuration, scope, and schedules, and listings will be treated in the same manner as GTE's listings.

2.3.3 Distribution. Upon directory publication, GTE will arrange for the initial and secondary distribution of the directory to Direct Communications Customers in the directory coverage area at no charge. Direct Communications will supply GTE in a timely manner with all required Customer mailing information including non-listed and non-published Customer mailing information, to enable GTE to perform its distribution responsibilities.

## 2.4 Directory Assistance (DA) Listing Information.

2.4.1 Definition. DA listing information includes the listed names, addresses and telephone numbers of GTE and authorized LEC Customers, except as otherwise provided herein. DA listing information provided shall indicate whether the Customer is a residence or business Customer. Excluded are listings for restricted LEC lines and non-published listings. GTE DA listing information includes 800/888 listings, non-listed numbers and foreign listings within the GTE franchise.

2.4.2 Availability. GTE will make available to Direct Communications, at Direct Communications's request, GTE end-user and authorized LEC DA listing information stored in GTE's DA database for the purposes of Direct Communications providing DA service to its Customers. GTE shall provide to Direct Communications, at Direct Communications's request, DA listing information within sixty (60) Business Days after an order is received for a specific state. The DA listing information will be provided in GTE format via magnetic tape or National Data Mover (NDM) as specified by Direct Communications. Updates to the DA listing information shall be provided on a daily basis through the same means used to transmit the initial load. Direct Communications agrees to pay GTE's standard charges for the initial load and daily updates of GTE's DA listing information, which will be provided upon request. The Parties will work together to identify and develop procedures for database error corrections.

2.4.3 Confidential Information. Such listings shall be confidential information pursuant to Article II, Section 4 and Direct Communications will use the listings only for its DA services to its Customers. Direct Communications is not authorized to release GTE's DA listing information to any third party or to provide DA to any other party using GTE DA listing information, including Direct Communications's Affiliates, subsidiaries or partners, except with the express written permission of GTE. In those instances where Direct Communications's affiliates, subsidiaries or partners also desire to use GTE's DA listing information, each affiliate, subsidiary or partner must negotiate a separate contract with GTE to obtain the listings. If Direct Communications uses a third-party DA service for its Customers, Direct Communications will ensure that such third party likewise treats the listings as confidential information pursuant to Article II, Section 4, and uses them only for Direct Communications end-user DA. GTE will include Direct Communications's DA listing information in GTE's DA data base which may be released to third parties which request GTE's DA listing information, unless Direct Communications provides GTE written notice within sixty (60) Business Days after the effective date of this Agreement that its DA listing information is

restricted and should not be released to third parties. In the event that Direct Communications does properly notify GTE that its DA listing information is restricted, GTE will so advise third parties requesting such information.

2.5 Dialing Format Changes.

GTE will provide reasonable notification to Direct Communications of changes to local dialing format (i.e. 7-10 digit, by end office).

2.6 E911/911.

Except as provided herein, Direct Communications will be required to negotiate a separate agreement or order separately pursuant to applicable GTE Tariffs.

3. Operations and Administrative Matters.

3.1 CLEC Profile.

Before orders can be taken, Direct Communications must complete and return the CLEC Profile, and if required, pay an advance deposit. Direct Communications will provide GTE with its Operating Company Number (OCN), Company Code (CC), and Customer Carrier Name Abbreviation (CCNA) as described in the GTE Guide located on GTE's WISE website at URL: <http://www.gte.com/wise>. Direct Communications hereby represents and warrants to GTE that it is a certified provider of telecommunications service or shall obtain that certification prior to placing any orders under this Agreement. Direct Communications will document its Certificate of Operating Authority on the CLEC Profile and agrees to update this CLEC Profile as required to reflect its current certification.

3.2 GTE Guide.

The GTE Guide is an Internet web site that contains GTE's operating practices and procedures; general information for pre-ordering, ordering, provisioning, repair and billing for resold services and unbundled network elements; and guidelines for obtaining interconnection with GTE's switched network. The Guide is intended to provide general guidelines and operational and administrative assistance to CLECs seeking to order services and facilities pursuant to this Agreement. Such guidelines and operating practices and procedures must be flexible to accommodate changes in the dynamic telecommunications industry, changes to promote increased effectiveness and efficiency, etc. Therefore, GTE reserves the right, upon prior advanced notice to Direct Communications, to make changes to the Guide. In reserving its right to make changes to the Guide, it is not GTE's intention to discriminate against Direct Communications's rights under this Agreement. If, in Direct Communications's opinion, a particular change to the Guide materially and adversely discriminates against Direct Communications's existing rights under this Agreement, Direct Communications may so notify GTE. If the Parties cannot resolve Direct Communications's concerns within a reasonable amount of time, Direct Communications may invoke the Dispute Resolution provisions in Article II, Section 3 to resolve the matter.

3.3 Contact Exchange.

The Parties agree to exchange and to update contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

### 3.4 Capacity Planning and Forecasting.

Within thirty (30) calendar days from the Effective Date, the Parties agree to have met and developed joint planning and forecasting responsibilities which are applicable to the service and facilities Attachments described above in Section 2. GTE may delay processing Direct Communications service orders should Direct Communications not perform its obligations as specified in this Section 3.4. Such responsibilities shall include but are not limited to the following:

- 3.4.1 The Parties will establish periodic reviews of network and technology plans and will notify one another no later than six (6) months in advance of changes that would impact either Party's provision of services.
- 3.4.2 Direct Communications will furnish to GTE information that provides for state-wide annual forecasts of order activity, in-service quantity forecasts, and facility/demand forecasts.
- 3.4.3 If this Agreement includes an Interconnection Attachment, the Parties will develop joint forecasting responsibilities for traffic utilization over trunk groups and yearly forecasted trunk quantities as set forth in that Attachment.
- 3.4.4 Direct Communications shall notify GTE promptly of changes greater than ten percent (10%) to current forecasts (increase or decrease) that generate a shift in the demand curve for the following forecasting period.

The Parties' compliance with the requirements of this provision shall not constitute a waiver of any rights or obligation either Party may have under Applicable Law relative to the offering and provisioning of services and facilities.

### 3.5 Electronic Interfaces.

The Parties shall work cooperatively in the implementation of electronic gateway access to GTE Operational Support Systems (OSS) functions in the long-term in accordance with established industry standards. Direct Communications should refer to the GTE Guide for the current OSS capabilities. The Parties agree that the Change Management Process (CMP) as defined on GTE's WISE website at URL: <http://www.gte.com/wise>, shall govern any change management principles applicable to changes in the OSS interfaces. Direct Communications may submit a written request to GTE if Direct Communications desires new or modified electronic interfaces exclusively to meet Direct Communications's requirements. If such requested electronic interfaces are different from what is Currently Available, GTE may agree, at its sole discretion, to provide such electronic interfaces; provided, however, all costs and expenses associated with the new or modified electronic interfaces shall be paid by Direct Communications. Direct Communications shall be responsible for modifying and connecting any of its pre-ordering and ordering systems with GTE provided interfaces as described in the GTE Guide.

### 3.6 OSS Performance Measures.

- 3.6.1 General. The Parties will provide a level of service to each other with respect to services and facilities under this Agreement in compliance with the non-discrimination requirements of the Act. Performance measures detail the areas of performance to be tracked, reported and audited to evaluate quality of service. The performance measures and related data will be posted monthly on GTE's WISE website at URL: <http://www.gte.com/wise>.



- 3.6.2 Changes. Performance measures to measure quality of service are provisional and subject to continued evolution as driven by the industry and state commissions. When developed and implemented on GTE's WISE website, new or modified performance measures shall be made available to Direct Communications and shall automatically modify and/or replace the existing performance measures GTE currently makes available to all CLECs.
- 3.6.3 Description. GTE's performance measures are made available on a nationwide basis to all qualifying CLECs. Such performance measures provide for standards to measure the quality of services and facilities offered by GTE within the following major categories:
- 3.6.3.1 Pre-ordering. Pre-ordering activities relate to the exchange of information between GTE and Direct Communications regarding current or proposed Customer products and services, or any other information required to initiate ordering of service. Pre-ordering encompasses the critical information needed to submit a provisioning order from Direct Communications to GTE. The pre-order measurement reports the timeliness with which pre-order inquiries are returned to Direct Communications by GTE.
- 3.6.3.2 Ordering. Ordering activities include the exchange of information between GTE and Direct Communications regarding requests for service. Ordering includes: (1) the submittal of the service request from Direct Communications, (2) rejection of any service request with errors and (3) confirmation that a valid service request has been received and a due date for the request assigned. Ordering performance measurements report on the timeliness with which these various activities are completed by GTE. Also captured within this category is reporting on the number of Direct Communications service requests that automatically generate a service order in GTE's service order creation system.
- 3.6.3.3 Provisioning. Provisioning is the set of activities required to install, change or disconnect a Customer's service. It includes the functions to establish or condition physical facilities as well as the completion of any required software translations to define the feature functionality of the service. Provisioning also involves communication between Direct Communications and GTE on the status of a service order, including any delay in meeting the commitment date and the time at which actual completion of service installation has occurred. Measurements in this category evaluate the quality of service installations, the efficiency of the installation process and the timeliness of notifications to Direct Communications that installation is completed or has been delayed.
- 3.6.3.4 Maintenance. Maintenance involves the repair and restoration of Customer service. Maintenance functions include the exchange of information between GTE and Direct Communications related to service repair requests, the processing of trouble ticket requests by GTE, actual service restoration and tracking of maintenance history. Maintenance measures track the timeliness with which trouble requests are handled by GTE and the effectiveness and quality of the service restoration process.
- 3.6.3.5 Network Performance. Network performance involves the level at which GTE provides services and facilitates call processing within its network. GTE also has the responsibility to complete network upgrades efficiently.

If network outages do occur, GTE needs to provide notification so appropriate network management and Customer notification can occur by Direct Communications. Network performance is evaluated on the quality of interconnection, the timeliness of notification of network outages and the timeliness of network upgrades (code openings) GTE completes on behalf of Direct Communications.

3.6.3.6 Billing. Billing involves the exchange of information necessary for Direct Communications to bill its Customers, to process the end-user's claims and adjustments, to verify GTE's bill for services provided to Direct Communications and to allow Direct Communications to bill for access. Billing measures have been designed to gauge the quality, timeliness and overall effectiveness of GTE billing processes associated with Direct Communications Customers.

3.6.3.7 Collocation. GTE is required to provide to CLECs available space as required by law to allow the installation of CLEC equipment. Performance measures in this category assess the timeliness with which GTE handles Direct Communications's request for collocation as well as how timely the collocation arrangement is provided.

3.6.3.8 Database updates. Database updates for directory assistance/listings and E911 include the processes by which these systems are updated with Customer information which has changed due to the service provisioning activity. Measurements in this category are designed to evaluate the timeliness and accuracy with which changes to Customer information, as submitted to these databases, are completed by GTE.

3.6.3.9 Interfaces. GTE provides Direct Communications with choices for access to OSS pre-ordering, ordering, maintenance and repair systems. Availability of the interfaces is fundamental to Direct Communications being able to effectively do business with GTE. Additionally, in many instances, Direct Communications personnel must work with the service personnel of GTE. Measurements in this category assess the availability to Direct Communications of systems and personnel at GTE work centers.

### 3.7 Law Enforcement Interface.

Except to the extent not available in connection with GTE's operation of its own business, GTE shall provide seven day a week/twenty-four hour a day assistance to law enforcement agencies for installation and information retrieval pertaining to traps, traces, court orders and subpoenas. GTE reserves the right to charge for this service.

### 3.8 Customer Contacts.

Except as otherwise provided in this Agreement or as agreed to in a separate notification signed by Direct Communications, Direct Communications shall provide the exclusive interface with Direct Communications's customers in connection with the marketing or offering of Direct Communications services. Except as otherwise provided in this Agreement, in those instances in which GTE personnel are required pursuant to this Agreement to (1) interface on behalf of Direct Communications directly with Direct Communications's current customers, or (2) interface directly with "pending" Direct Communications customers for the purpose of effectuating a Direct Communications order for change of service, such personnel shall not identify themselves as representing GTE. For purposes of this section, a "pending" Direct Communications customer means

any GTE customer for whom Direct Communications has submitted a valid change in service order, but for whom the change in service has yet to be completed. In both such instances, all forms, business cards or other business materials furnished by GTE to Direct Communications's current or pending customers shall be generic in nature. In no event shall GTE personnel acting on behalf of Direct Communications pursuant to this Agreement provide information to Direct Communications customers about GTE products or services unless otherwise authorized by Direct Communications.

Nothing in this Section 3.8 shall preclude GTE from contacting Direct Communications's current or pending customers in the normal course of GTE's marketing and sales activities; provided, however, that those GTE wholesale market personnel responsible for processing requests for customer service records, change in service orders, or other requests by Direct Communications shall not share any CPNI with GTE's retail sales and marketing personnel in violation of the law or, to the extent required under applicable law, without Direct Communications's consent.

### 3.9 Standard Practices.

The Parties acknowledge that GTE has already implemented, and shall be establishing or adopting, some industry standard practices and/or its own standard practices, that are not otherwise specified in this Agreement, to implement the various requirements of its obligations hereunder. Such standard practices are defined as practices that are generally applicable to the CLEC industry as a whole and are not specific to Direct Communications. Such practices will be administered on a nondiscriminatory basis. Direct Communications agrees that GTE may implement such industry standard practices to satisfy any GTE obligations under this Agreement.

## 4. Financial Matters.

### 4.1 Rates.

4.1.1 Rate Lists. Except as otherwise provided herein, the rate and charge list for a given facility or service ordered hereunder shall be set forth as an Appendix to the facility or service Attachment.

4.1.2 Rate Changes. The rates and charges set forth in the applicable Appendices to this Agreement are permanent and are not subject to change or modification, except as otherwise expressly provided in this Agreement or to the extent that the Eighth Circuit Court of Appeals or any other court or commission of competent jurisdiction overturns, invalidates, stays, vacates or otherwise modifies the total element long run incremental cost (TELRIC) or other methodology from which such rates and charges were derived. In the event the Eighth Circuit or any other Court or Commission of competent jurisdiction overturns, invalidates, stays, vacates or otherwise modifies such methodology, such decision, order or ruling shall apply retroactively to the Effective Date of this Agreement. The Parties further agree that they, in good faith, shall negotiate replacement rates and charges ("new rates") within ninety (90) calendar days of the date upon which such decision, order or ruling is issued, and shall use the new rates to true-up the rates and charges herein from the Effective Date of this Agreement.

The Parties acknowledge that the provisions of this Section 4.1.2 shall survive the termination, rescission, modification or expiration of this Agreement without limit as to time, and that in the event that the Eighth Circuit Court of Appeals or any other court or commission of competent jurisdiction issues an order or decision as contemplated in this Section 4.1.2 after this Agreement terminates or

expires, either Party may require a true-up of the affected rates or charges based on that order or decision retroactive to the Effective Date of this Agreement. Each Party acknowledges that the other Party may seek to enforce the provisions in this Section 4.1.2 before a commission or court of competent jurisdiction.

4.1.3 TBD Prices. Numerous provisions in this Agreement refer to pricing principles. If a provision references prices and there are no corresponding prices, such price shall be considered "To Be Determined" (TBD). With respect to all TBD prices, prior to Direct Communications ordering any such TBD item, the Parties shall meet and confer to establish a price. If the Parties are unable to reach agreement on a price for such item, a price shall be set for such item that is equal to the price for the nearest analogous item for which a price has been established (for example, if there is not an established price for a Non-Recurring Charge (NRC) for a specific UNE, the Parties would use the NRC for the most analogous service for which there is an established price.

#### 4.2 Cost Recovery.

GTE shall be entitled to recover all costs it incurs in meeting its obligations under this Agreement. If GTE is required to make expenditures or otherwise incur costs that are not otherwise specifically reimbursed under this Agreement, GTE is entitled to reimbursement from Direct Communications for all such expenditures and costs. For all such expenditures and costs, GTE shall receive through NRCs the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and a reasonable contribution to GTE's common costs. GTE will provide, at Direct Communications's request, the explanation of the costs and expenses incurred. If a dispute arises from this process, either Party may use the Dispute Resolution provision described in Article II, Section 3 of this Agreement to resolve the dispute.

#### 4.3 Billing and Payment.

4.3.1 General. Payment for all facilities and services provided hereunder is due thirty (30) calendar days from the bill date. Neither Party will bill the other Party for previously unbilled charges incurred more than one (1) year prior to the current billing date. If any undisputed amount due on the billing statement is not received by the billing Party on the payment due date, the billing Party shall calculate and assess, and the billed Party agrees to pay, at the billing Party's option, a charge on the past due balance at an interest rate equal to the amount allowed by the applicable state access tariffs, the state retail tariff, or federal tariff, in accordance with the service ordered, or the maximum nonusurious rate of interest under applicable law. Late payment charges shall be included on the next statement.

4.3.2 Security. Upon request by GTE, Direct Communications shall, at any time and from time to time, provide GTE adequate assurance of payment of amounts due (or to become due) to GTE hereunder. Assurance of payment of charges may be requested by GTE if Direct Communications (a) in GTE's reasonable judgement, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (b) fails to timely pay a bill rendered to Direct Communications by GTE, (c) in GTE's reasonable judgement, at the Effective Date or at any time thereafter, does not have established credit with GTE or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency,

reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. Unless otherwise agreed by the Parties, the assurance of payment shall, at GTE's request, consist of (i) a cash security deposit in U.S. dollars held in an account by GTE or (ii) an unconditional, irrevocable standby letter of credit naming GTE as the beneficiary thereof and that is otherwise in form and substance satisfactory to GTE from a financial institution acceptable to GTE, in either case in an amount equal to two (2) months anticipated charges (including, without limitation, both recurring and non-recurring charges), as reasonably determined by GTE, for the services, facilities or arrangements to be provided by GTE to Direct Communications in connection with this Agreement. To the extent that GTE opts for a cash deposit, the Parties intend that the provision of such deposit shall constitute the grant of a security interest pursuant to Article 9 of the Uniform Commercial Code as in effect in any relevant jurisdiction. If required by an applicable GTE Tariff or by Applicable Law, interest will be paid on any such deposit held by GTE at the higher of the stated interest rate in such Tariff or in the provisions of the Applicable Law. GTE may (but is not obligated to) draw on the letter of credit or funds on deposit in the account, as applicable, upon notice to Direct Communications in respect of any amounts billed hereunder that are not paid within thirty (30) calendar days of the date of the applicable statement of charges prepared by GTE. The fact that a security deposit or a letter of credit is requested by GTE hereunder shall in no way relieve Direct Communications from compliance with GTE's regulations as to advance payments and payment for service, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of service for nonpayment of any sums due to GTE for the services, facilities or arrangements rendered.

- 4.3.3 Billing Disputes. If the billed Party disputes a billing statement issued by the billing Party, the billed Party (the "Non-Paying Party") shall notify the billing Party in writing regarding the specific nature and basis of the dispute within six (6) months of the statement date or the dispute shall be waived. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party as specified in Section 4.3.1. The Parties shall diligently work toward resolution of all billing issues. If a dispute arises from this process, either Party may invoke the Dispute Resolution provision described in Article II, Section 3 of this Agreement to resolve the dispute.
- 4.3.4 Information Requirements/Audits. Except as provided elsewhere in this Agreement and where applicable, in conformance with Multiple Exchange Carrier Access Billing (MECAB) guidelines and Multiple Exchange Carriers Ordering and Design Guidelines for Access Services-Industry Support Interface (MECOD), Direct Communications and GTE agree to exchange all information to accurately, reliably, and properly order and bill for features, functions and services rendered under this Agreement. Either Party may conduct an audit of the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.
- 4.3.5 Impact of Payment of Charges on Service. Direct Communications is solely responsible for the payment of all charges for all services and facilities furnished

under this Agreement, including, but not limited to, calls originated or accepted at its or its Customers' service locations. If Direct Communications fails to pay when due any and all charges billed to Direct Communications under this Agreement, including any late payment charges (collectively, "unpaid charges"), and any or all such charges remain unpaid more than forty-five (45) calendar days after the bill date of such unpaid charges excepting previously disputed charges for which Direct Communications may withhold payment, GTE shall notify Direct Communications in writing that it must pay all unpaid charges to GTE. If Direct Communications disputes the billed charges, it shall, within seven (7) Business Days, inform GTE in writing of which portion of the unpaid charges it disputes, including the specific details and reasons for the dispute, unless such reasons have been previously provided, and shall immediately pay to GTE all undisputed charges. If Direct Communications and GTE are unable, within thirty (30) Business Days thereafter, to resolve issues related to the disputed charges, then either Direct Communications or GTE may file a request for arbitration under General Provisions of this Agreement to resolve those issues. Upon resolution of any dispute hereunder, if Direct Communications owes payment it shall make such payment to GTE with any late payment charge from the original payment due date. If Direct Communications owes no payment, but has previously paid GTE such disputed payment, then GTE shall credit such payment including any late payment charges. GTE may discontinue service to Direct Communications upon failure to pay undisputed charges as provided in this Section and shall have no liability to Direct Communications or Direct Communications's Customers in the event of such disconnection. If Direct Communications fails to provide such notification or any of Direct Communications's Customers fail to select a new provider of services within the applicable time period, GTE may provide local exchange services to Direct Communications's Customers under GTE's applicable Customer tariff at the then current charges for the services being provided. In this circumstance, otherwise applicable service establishment charges will not apply to Direct Communications's Customer, but will be assessed to Direct Communications.

#### 4.4 Taxes.

- 4.4.1 With respect to any purchase of service under this Agreement, if any federal, state or local government tax, fee, surcharge, or other tax-like charge excluding any tax levied on property or income (a "Tax") is required or permitted by applicable law, ordinance or tariff to be collected from a purchasing Party by the providing Party, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) pursuant to Section 4.3.1, the purchasing Party will remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable governmental authority as required by law.
- 4.4.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is no responsible for the Tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity.
- 4.4.3 If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

- 4.4.4 If applicable law does exclude or exempt a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 4.4.2, will not bill or collect such Tax during the effective period of the exemption. Such exemption will be effective upon receipt of the exemption certificate or affidavit in accordance with Section 4.4.7.
- 4.4.5 If applicable law does not exclude or exempt a purchase of services under this Agreement from a Tax, and does not also provide an exemption procedure, then the providing Party will not bill or collect such tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless on an after-tax basis with respect to forbearing to collect such Tax.
- 4.4.6 With respect to any Tax or Tax controversy covered by this Section 4.4 , the purchasing Party will be entitled to contest, pursuant to applicable law, and at its own expense, any Tax that it is ultimately obligated to pay. The purchasing Party will be entitled to the benefit of any refund or recovery resulting from such a contest.
- 4.4.7 All exemption certificates or other communications required or permitted to be given by Direct Communications to GTE under this Section 4.4, will be made in writing and will be delivered to GTE's Account Manager for Direct Communications.

5. Term and Termination.

5.1 Effective Date.

This Agreement will be effective upon the Effective Date set forth at the beginning of this 251/252 Agreement. Subject to the Parties reservation of rights described in Article II, Section 1.4, any modifications to this Agreement required as a result of the Commission review and approval process will be deemed to be effective as of the Effective Date. The Parties agree LSR orders for resold services, INP services, and unbundled network elements will not be submitted or accepted within the first ten (10) Business Days after the Effective Date. In addition, notwithstanding the possible rejection or modification of this Agreement by the Commission, the Parties agree that all of their obligations and duties hereunder shall remain in full force and effect pending the final disposition of the Commission review and approval process.

5.2 Term.

Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be from the Effective Date of this Agreement until July 20, 2002 ("Termination Date").

5.3 Renegotiation.

If either Party seeks to renegotiate, extend or amend this Agreement, it must provide written notice thereof to the other Party no later than nine (9) months prior to the Termination Date. Any such request shall be deemed by both Parties to be a good faith

request for negotiations pursuant to Section 252 of the Act (or any successor provision), regardless of which Party made such request. If either Party makes such request, this Agreement may remain in effect for a period not to exceed three (3) months following the Termination Date, for the purpose of incorporating into the new agreement any arbitration decision or related order issued within three (3) months prior to the end of such nine (9) month period.

5.4 Termination Upon Default or Abandonment.

Either Party may terminate this Agreement prior to the Termination Date in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is defined to include:

- 5.4.1 A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
- 5.4.2 A Party's refusal or failure in any material respect to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

In addition, this Agreement shall be null and void if Direct Communications has not placed an order for a service or facility hereunder by one year following Effective Date.

5.5 Termination Upon Sale.

Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof. The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice.

Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.

5.6 Liability Upon Termination.

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

5.7 252(i) Adoptions.

Direct Communications shall have the right to adopt any publicly filed agreement, or any interconnection, resale, collocation or network element arrangement contained therein, to which GTE is a Party and that has been approved by the Commission for the State pursuant to section 252 of the 1996 Act subsequent to the approval of this Agreement. This right shall be exercised in accordance with, and subject to, the requirements of 47 U.S.C. §252(i) and applicable rules and regulations, including without limitation, the following: (a) Direct Communications must adopt all of the terms and conditions "legitimately related" to, and thus constituting part of, the requested interconnection, resale, collocation or network element arrangement; (b) GTE shall not be required to provide a given arrangement or agreement to the Direct Communications if it is either (i)



more costly than providing it to the original carrier, or (ii) technically infeasible; (c) to the extent inconsistent with such adopted arrangement or agreement, this Agreement shall be superseded by the adopted arrangement or agreement; and (d) the parties shall document said adoption in writing and make an appropriate filing with the Commission pursuant to applicable procedures.

**ARTICLE II  
GENERAL PROVISIONS**

1. Regulatory/Legal Matters.

1.1 Regulatory Approvals.

This Agreement will be submitted to the Commission for approval. Each Party shall be responsible for obtaining and keeping in effect all FCC, Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. If either Party does not provide necessary filing materials within sixty (60) days of execution of this Agreement, any contract signatures will no longer be effective.

1.2 Applicable Law/Changes in Law.

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. The terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time this Agreement was produced, and shall be subject to any and all applicable statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings that subsequently may be prescribed by any federal, state or local governmental authority having appropriate jurisdiction. Except as otherwise expressly provided herein, such subsequently prescribed statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings will be deemed to automatically supersede any conflicting terms and conditions of this Agreement. In addition, subject to the requirements and limitations set forth in Section 1.3, to the extent required or reasonably necessary, the Parties shall modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such statute, regulation, rule, ordinance, judicial decision or administrative ruling.

1.3 Severability/Unenforceable Terms.

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the reasonable opinion of either Party, in a material change to this Agreement. If a material change occurs as a result of action by a court or regulatory agency of competent jurisdiction, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may, subject to its obligations under applicable law, terminate this Agreement without penalty or liability upon written notice to the other Party.

1.4 Reservation of Rights.

The Parties agree that their entrance into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including, without limitation, matters related to GTE's cost recovery set forth in this Agreement. Moreover, except as expressly provided herein, neither Party waives any right with respect to any position it may take in the future with respect to the establishment of rates, terms and conditions related to the subject matter of this Agreement which may become effective subsequent to the termination of this Agreement. By executing this Agreement, GTE does not waive, and hereby expressly reserves, its rights to continue to assert that: (a) the rates and charges in this Agreement should not become effective until such time

as the Commission has established an explicit, specific, predictable, sufficient and competitively neutral universal service mechanism that provides GTE the opportunity to recover its actual costs; and (b) certain provisions of the FCC's First Report and Order in FCC Docket No. 96-98 and other FCC orders or rules (collectively, the "FCC Orders") in effect as of the Effective Date or during the term of this Agreement are unlawful, illegal and improper. GTE and Direct Communications further agree that the terms and conditions of this Agreement reflect certain requirements of the FCC Orders, and thus, except as provided herein, shall be subject to any and all actions by any court or other governmental authority that invalidate, stay, vacate or otherwise modify any such FCC Orders. Direct Communications acknowledges that GTE may seek to enforce such action before a commission or court of competent jurisdiction. This Section 1.4 shall survive the termination, expiration, modification or rescission of this Agreement without limit as to time, regardless of the date of said action

#### 1.5 Tariff Offerings.

Some of the services and facilities to be provided to Direct Communications by GTE in satisfaction of this Agreement may be provided, in whole or part, pursuant to existing GTE tariffs. GTE shall have the right to modify its tariffs subsequent to the Effective Date of this Agreement, and upon written notice to Direct Communications, such modifications shall automatically apply to such services and facilities. The Parties shall cooperate with one another for the purpose of incorporating such modifications into this Agreement to the extent reasonably necessary or appropriate. Notwithstanding the foregoing, except as otherwise specifically provided herein: (a) GTE shall not have the right to file tariffs for services and facilities that supersede the terms and conditions of this Agreement if the services and/or facilities were not previously provided pursuant to tariff hereunder; unless otherwise ordered by the Commission (pursuant to Applicable Law and not at the request of either Party) and (b) the Parties shall have the right to modify the terms of such GTE tariffs as applied to this Agreement, as reasonably necessary or appropriate to fulfill their obligations under the Act or applicable rules and regulations in connection with the implementation of this Agreement. This section shall apply only to Direct Communications and shall not be construed as applying to any non-parties.

#### 1.6 Certificate of Operating Authority.

When ordering any service or facility hereunder, Direct Communications hereby represents and warrants to GTE that it is a certified provider of local dial-tone service. Direct Communications will provide a copy of its Certificate of Operating Authority or other evidence of its status to GTE upon request.

### 2. Liability Matters.

#### 2.1 Indemnification.

2.1.1 General Requirement. Subject to the limitations set forth in Section 2.7, each Party (the "Indemnifying Party") shall release, defend, indemnify and save harmless the other Party, its directors, officers, employees, servants, agents, Affiliates, subsidiaries and parent, and any third-party provider or operator of facilities involved in the provision of services or facilities under this Agreement (collectively, the "Indemnified Party"), from and against any and all suits, claims, obligations, liabilities, damages, demands, losses, expenses, causes of action and costs, deficiencies, taxes, interest on taxes, or penalties, court costs and reasonable attorneys' fees, injuries, damage, destruction, loss or death to property or persons (including payments made under workers' compensation law or under any plan for employees' disability and death benefits) and actual or

alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, suffered, made, instituted, or asserted by the Indemnified Party or any other party or person, including, without limitation, the Indemnified Party's Customers (collectively, the "Indemnification Claims") which are proximately caused by:

- 2.1.1.1 any breach or nonfulfillment of any representation, covenant, term, condition or agreement on the part of the Indemnifying Party under this Agreement;
- 2.1.1.2 the negligence or willful misconduct of the Indemnifying Party or any of its directors, officers, employees, servants, agents, Affiliates, subsidiaries and parent, regardless of the form of action;
- 2.1.1.3 the installation, maintenance, repair, replacement, presence, engineering, use or removal of the Indemnifying Party's collocation equipment, in GTE's central office(s), wire center(s) or access tandem(s);
- 2.1.1.4 the violation or alleged violation by the Indemnifying Party or any of its directors, officers, employees, servants, agents, Affiliates, subsidiaries and parent of any federal, state, or local law, regulation, permit, or agency requirement; or
- 2.1.1.5 the presence or alleged presence of contamination arising out of the Indemnifying Party's acts or omissions concerning its operations at a GTE Facility.

To the extent the Indemnified Party pays for an indemnifiable loss, cost or expense, or otherwise incurs pecuniary obligations, in satisfaction of, or arising out of or related to any Indemnification Claim, the Indemnifying Party shall also be liable to the Indemnified Party for interest on such payments at the prime rate of the Bank of America, N.A. from the date that the Indemnified Party makes such payments. The obligations of this Section shall survive the termination, cancellation, modification or rescission of this Agreement, without limit as to time.

#### 2.1.2 Notice and Claim Procedure.

- 2.1.2.1 General Requirements. The Indemnified Party: (i) shall give the Indemnifying Party notice (which shall include all facts known to the Indemnified Party giving rise to such right and an estimate of the amount thereof) of the Indemnification Claim and any Third Party Claim (as hereinafter defined) relating to such right promptly after receipt or becoming aware thereof; (ii) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Third Party Claim; (iii) shall not consent to any settlement or compromise of the Third Party Claim without the written consent of the Indemnifying Party (which consent, unless the Indemnifying Party has elected to assume the exclusive defense of such Claim, shall not be unreasonably withheld or delayed); (iv) shall permit the Indemnifying Party, if it so elects, to assume the defense of such Third Party Claim (including, except as provided below, the compromise or settlement thereof) at its own cost and expense, *provided, however*, that in such event the Indemnified Party shall have the right to approve the Indemnifying Party's choice of legal counsel, which approval shall not be unreasonably withheld; and (v) shall cooperate in every reasonable

way to facilitate defense or settlement of claims. For the purposes of this Agreement, "Third Party Claim" shall mean any Indemnification Claim by any third party.

2.1.2.2 Consultation and Consent. If the Indemnified Party (i) fails to notify or to consult with the Indemnifying Party with respect to any Third Party Claim in accordance with subparagraph (a)(i) or (a)(ii) above (which failure shall have a material and adverse effect upon the Indemnifying Party); or (ii) consents to the settlement or compromise of any Third Party Claim without having received the written consent of the Indemnifying Party (unless, if the Indemnifying Party has not elected to assume the defense of such Claim, the consent of the Indemnifying Party is unreasonably withheld or delayed), then the Indemnifying Party shall be relieved of its indemnification obligation with respect to such Third Party Claim under this Agreement.

2.1.2.3 Defense of Claim. If the Indemnifying Party elects to assume the defense of any Third Party Claim pursuant to this Agreement, it shall notify the Indemnified Party in writing of such election. The Indemnifying Party shall not compromise or settle any such Third Party Claim without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed).

2.1.3 Intellectual Property Exception. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

## 2.2 Environmental Responsibility.

2.2.1 General Requirements. Direct Communications shall:

2.2.1.1 comply with all laws regarding the handling, use, transport, storage, and disposal of, and be responsible for all hazards created by and damages or injuries caused by, any materials brought to or used at the GTE Facility by Direct Communications;

2.2.1.2 ensure all activities conducted by Direct Communications at the GTE Facility are in accordance with all applicable federal, state, and local laws, regulations, permits, and agency orders, approvals, and authorizations relating to safety, health, and the environment;

2.2.1.3 cause its invitees, agents, employees, and contractors to comply with such reasonable environmental or safety practices/procedures, whether or not required by law, as requested by GTE when working at a GTE Facility;

2.2.1.4 ensure that no substantial new safety or environmental hazards shall be created or new hazardous substances shall be used at a GTE Facility;

- 2.2.1.5 demonstrate adequate training and emergency response capabilities related to materials brought to, used, or existing at the GTE Facility;
- 2.2.1.6 follow appropriate practices/procedures in evaluating and managing any water, sediment, or other material present in the manhole or vault area so as to ensure compliance with all applicable laws, regulations, permits, and requirements applicable in such circumstances and to ensure safe practices, when conducting operations in any GTE manhole or vault area;
- 2.2.1.7 obtain and use its own environmental permits, approvals, or identification numbers to the extent that such permits, approvals, or identification numbers are required under applicable laws, including, without limitation, any of its operations involving the evaluation, collection, discharge, storage, disposal, or other management of water, sediment, or other material present in a GTE manhole or vault area;
- 2.2.1.8 provide reasonable and adequate compensation to GTE for any additional or increased costs associated with compliance with any federal, state, or local law, regulation, permit, or agency requirement related to safety, health, or the environment where such additional or increased cost is incurred as a result of providing Direct Communications with interconnection or collocation, including, but not limited to, costs associated with obtaining appropriate permits or agency authorizations or approvals, re-mediation or response to any release or threatened release of any regulated substance, investigation or testing related, and training or notification requirements;
- 2.2.1.9 ensure that activities impacting safety or the environment of a Right of Way (ROW) are harmonized with the specific agreement and the relationship between GTE and the land owner; and
- 2.2.1.10 comply with any limitations associated with a ROW, including limitations on equipment access due to environmental conditions (e.g., wetland areas having equipment restrictions).

GTE shall not be responsible for any costs incurred by Direct Communications in meeting its obligations under this Section.

- 2.2.2 Required Notices. GTE and Direct Communications shall provide to each other specific notice of known and recognized physical hazards or hazardous substances brought to, used, or existing at the GTE Facility and conditions or circumstances potentially posing a threat of imminent danger, including, by way of example only, a defective utility pole or significant petroleum contamination in a manhole. If Direct Communications discovers Third Party Contamination at a GTE Facility, Direct Communications will immediately notify GTE and will consult with GTE prior to making any required notification, unless the time required for prior consultation would preclude Direct Communications from complying with an applicable reporting requirement. GTE and Direct Communications shall coordinate plans or information required to be submitted to government agencies, such as, by way of example only, emergency response plans and chemical inventory reporting. If fees are associated with such filings, GTE and Direct Communications shall develop a cost sharing procedure.
- 2.2.3 Use of GTE Permits. If the relevant regulatory authority refuses to issue a separate permit, approval, or identification number to Direct Communications

after a complete and proper request by Direct Communications for same, then GTE's permit, approval, or identification number may be used as authorized by law and upon prior approval by GTE. In that case, Direct Communications must comply with all of GTE's environmental, health, and safety practices/procedures relating to the activity in question, including, but not limited to, use of environmental "best management practices (BMP) and selection criteria for vendors and disposal sites.

2.2.4 No Warranty. The Parties acknowledge and agree that: (a) nothing in this Agreement or in any of GTE's practices/procedures constitutes a warranty or representation by GTE that Direct Communications's use of GTE's permits, approvals, or identification numbers or compliance with GTE's practices/procedures, this Agreement or GTE's directions or recommendations, will achieve compliance with any applicable law; and (b) such compliance or use of GTE's permits, approvals, or identification numbers creates no right of action against GTE.

### 2.3 Insurance.

2.3.1 Coverage Limits. Direct Communications shall, at its sole cost and expense, obtain, maintain, pay for and keep in force the following minimum insurance, underwritten by an insurance company(s) having a Best's insurance rating of at least A-, financial size category VII.

2.3.1.1 Commercial general liability coverage on an occurrence basis in an amount of \$1,000,000 combined single limit for bodily injury and property damage with a policy aggregate per location of \$2,000,000. This coverage shall include contractual liability.

2.3.1.2 Umbrella/Excess Liability coverage in an amount of \$10,000,000 excess of coverage specified in (a) above.

2.3.1.3 All Risk Property coverage on a full replacement cost basis insuring all of Direct Communications's real and personal property located on or within GTE wire centers. Direct Communications may also elect to purchase business interruption and contingent business interruption insurance, knowing that GTE has no liability for loss of profit or revenues should an interruption of service occur.

2.3.1.4 Statutory Workers Compensation coverage.

2.3.1.5 Employers Liability coverage in an amount of \$500,000 each accident.

2.3.1.6 Commercial Automobile Liability coverage insuring all owned, hired and non-owned automobiles.

Notwithstanding anything herein to the contrary, the coverage requirements described in Sections 2.3.1.3 – 2.3.1.6 above shall only be required if Direct Communications orders collocation services pursuant to a Collocation Attachment. The minimum amounts of insurance required in this section, may be satisfied by Direct Communications purchasing primary coverage in the amounts specified or by Direct Communications buying a separate umbrella and/or excess policy together with lower limit primary underlying coverage. The structure of the coverage is at Direct Communications's option, so long as the total amount of insurance meets GTE's minimum requirements. The limits of the insurance

policies obtained by Direct Communications as required above shall in no way limit Direct Communications's liability to GTE should Direct Communications be liable to GTE under the terms of this Agreement or otherwise.

- 2.3.2 Deductibles. Any deductibles, self-insured retentions (SIR), loss limits, retentions, etc. (collectively, "Retentions") must be disclosed on a certificate of insurance provided to GTE, and GTE reserves the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of the Direct Communications.
- 2.3.3 Additional Insureds. GTE and its affiliates (which includes any corporation controlled by, controlling or in common control with GTE Corporation) their respective directors, officers and employees shall be named as additional insureds under all General Liability and Umbrella/Excess Liability Policies obtained by Direct Communications. Said endorsement shall provide that such additional insurance is primary insurance and shall not contribute with any insurance or self-insurance that GTE has secured to protect itself. All of the insurance afforded by the Direct Communications shall be primary in all respects, including Direct Communications's Umbrella/Excess Liability insurance. GTE's insurance coverage shall be excess over any indemnification and insurance afforded by Direct Communications and required hereby.
- 2.3.4 Waiver of Subrogation Rights. Direct Communications waives and will require all of its insurers to waive all rights of subrogation against GTE (including GTE Corporation and any other affiliated and/or managed entity), its directors, officers and employees, agents or assigns, whether in contract, tort (including negligence and strict liability) or otherwise.
- 2.3.5 Evidence of Insurance. All insurance must be in effect on or before GTE authorizes access by Direct Communications employees or placement of Direct Communications equipment or facilities within GTE premises and such insurance shall remain in force as long as Direct Communications's facilities remain within any space governed by this Agreement. If Direct Communications fails to maintain the coverage, GTE may pay the premiums and seek reimbursement from Direct Communications. Failure to make a timely reimbursement will result in disconnection of service. Direct Communications agrees to submit to GTE a certificate of insurance ACORD Form 25-S (1/95), or latest edition, such certificate to be signed by a duly authorized officer or agent of the Insurer, certifying that the minimum insurance coverages and conditions set forth hereinabove are in effect, and that GTE will receive at least thirty (30) calendar days notice of policy cancellation, expiration or non-renewal. At least thirty (30) days prior to the expiration of the policy, GTE must be furnished satisfactory evidence that such policy has been or will be renewed or replaced by another policy. At GTE's request, Direct Communications shall provide copies of the insurance provisions or endorsements as evidence that the required insurance has been procured, and that GTE has been named as an additional insured, prior to commencement of any service. In no event shall permitting Direct Communications access be construed as a waiver of the right of GTE to assert a claim against Direct Communications for breach of the obligations established in this section.
- 2.3.6 Compliance Requirements. Direct Communications shall require its contractors to comply with each of the provisions of this insurance section. This includes, but is not limited to, maintaining the minimum insurance coverages and limits, naming GTE (including GTE Corporation and any other affiliated and/or managed entity) as an additional insured under all liability insurance policies, and waiving



all rights of subrogation against GTE (including GTE Corporation and any other affiliated and/or managed entity), its directors, officers and employees, agents or assigns, whether in contract, tort (including negligence and strict liability) or otherwise. Prior to commencement of any work, Direct Communications shall require and maintain certificates of insurance from each contractor evidencing the required coverages. At GTE's request, Direct Communications shall supply to GTE copies of such certificates of insurance or require the contractors to provide insurance provisions or endorsements as evidence that the required insurance has been procured. Direct Communications must also conform to the recommendation(s) made by GTE's fire insurance company, which GTE has already agreed to or shall hereafter agree to.

2.4 Impairment of Service.

The characteristics and methods of operation of any circuits, facilities or equipment of Direct Communications connected with the services, facilities or equipment of GTE pursuant to this Agreement shall not interfere with or impair service over any facilities of GTE, its Affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over GTE's facilities or create hazards to the employees of GTE or to the public (each hereinafter referred to as an "Impairment of Service"). If Direct Communications causes an Impairment in Service, GTE shall promptly notify Direct Communications of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. GTE and Direct Communications agree to work together to attempt to promptly resolve the Impairment of Service. If the Direct Communications is unable to promptly remedy the Impairment of Service, then GTE may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

2.5 Fraud.

Direct Communications assumes responsibility for all fraud associated with its Customers and accounts. GTE shall bear no responsibility for, nor is it required to investigate or make adjustments to Direct Communications's account in cases of fraud.

2.6 DISCLAIMER.

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, 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.

2.7 Limitation of Liability.

Each Party's liability under this agreement to the other Party, whether direct or otherwise arising out of the duty to indemnify against a third-party under this Section 2, all whether in contract, tort or otherwise, shall be limited to direct damages, and except with respect to Indemnification Claims relating to personal injury, environmental, fraud or collocation matters, said liability shall not exceed the monthly charges, plus any related costs/expenses either Party may recover, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for the month during which the claim of liability arose. Under no circumstance shall either Party

be responsible or liable for indirect, incidental, consequential, special, punitive or exemplary damages, including, but not limited to, interruption of service or designated facilities, economic loss or lost business, revenues or profits, loss of AC or DC power, HVAC interruptions, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data, even if the Party has been advised of the possibility of the same. Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

2.8 Inapplicability of Tariff Liability.

GTE's general liability, as described in the GTE retail tariff, does not extend to Direct Communications's customers or any other third party. Liability of GTE to Direct Communications resulting from any and all causes arising out of services and facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to GTE. GTE shall be liable for the individual services, facilities or elements that it separately provides to Direct Communications and shall not be liable for the integration of components combined by Direct Communications.

2.9 Direct Communications Tariffs or Contracts.

Direct Communications shall, in its tariffs or other contracts for services provided to its customers using services obtained from GTE, provide that in no case shall GTE be liable to Direct Communications's customers or any third parties for any indirect, special or consequential damages, including, but not limited to, economic loss or lost business or profits, whether foreseeable or not, and regardless of notification by Direct Communications of the possibility of such damages and Direct Communications shall indemnify and hold GTE harmless from any and all claims, demands, causes of action and liabilities based on any reason whatsoever from its customers as provided in this Agreement. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship with Direct Communications's customers.

2.10 No Liability for Errors.

GTE is not liable for mistakes that appear in GTE's listings, 911 and other information databases, or for incorrect referrals of customers to Direct Communications for any ongoing Direct Communications service, sales or repair inquiries, and with respect to such mistakes or incorrect referrals, Direct Communications shall indemnify and hold GTE harmless from any and all claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorney's fees incurred on account thereof, by third parties, including Direct Communications's customers or employees. For purposes of this Section 2 mistakes and incorrect referrals shall not include matters arising out of the willful misconduct of GTE or its employees or agents.

2.11 Unlawful Use of Service.

Services provided by GTE pursuant to this Agreement shall not be used by Direct Communications or its customers for any purpose in violation of law. Direct Communications, and not GTE, shall be responsible to ensure that Direct Communications and its customers' use of services provided hereunder comply at all times with all applicable laws. GTE may refuse to furnish service to Direct Communications or disconnect particular services provided under this Agreement to Direct Communications or, as appropriate, Direct Communications's customer when (i)

an order is issued by a court of competent jurisdiction finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law or (ii) GTE is notified in writing by a law enforcement agency acting within its jurisdiction that any facility furnished by GTE is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of law. Termination of service shall take place after reasonable notice is provided to Direct Communications, or as ordered by the court. If facilities have been physically disconnected by law enforcement officials at the premises where located, and if there is not presented to GTE the written finding of a court, then upon request of Direct Communications and agreement to pay restoral of service charges and other applicable service charges, GTE shall promptly restore such service.

### 3. Dispute Resolution.

#### 3.1 Alternative to Litigation.

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any action, dispute, controversy or claim arising out of or relating to this Agreement or its breach, except with respect to the following:

- 3.1.1 An action seeking a temporary restraining order or an injunction related to the purposes of this Agreement;
- 3.1.2 A dispute, controversy or claim relating to or arising out of a change in law or reservation of rights under the provisions of Article II, Section 1; and
- 3.1.3 A suit to compel compliance with this dispute resolution process.

Any such actions, disputes, controversies or claims may be pursued by either Party before any court, commission or agency of competent jurisdiction.

#### 3.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable or admissible, be discovered, or be admitted in evidence, in the arbitration or lawsuit.

#### 3.3 Arbitration.

If the negotiations do not resolve the dispute within sixty (60) Business Days of the initial written request, the dispute shall be submitted by either Party or both Parties (with a copy

provided to the other Party) to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association, except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator shall be deemed final, binding and nonappealable and may be entered in any court having jurisdiction.

#### 3.4 Expedited Arbitration Procedures.

If the issue to be resolved through the negotiations referenced in Section 3.2 directly and materially affects service to either Party's end-user Customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).

#### 3.5 Costs.

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

#### 3.6 Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations, including making payments in accordance with Article I, Section 4.3 of this Agreement.

### 4. Confidential Information.

#### 4.1 Identification.

Either Party may disclose to the other proprietary or confidential Customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within thirty (30) calendar days after oral or visual disclosure. Notwithstanding the

foregoing, the following shall be deemed Confidential Information for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary: (a) preorders and all orders for services or UNEs placed by Direct Communications pursuant to this Agreement, and information that would constitute Customer proprietary network information of Direct Communications end-user Customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information with respect to Direct Communications Customers, whether disclosed by Direct Communications to GTE or otherwise acquired by GTE in the course of its performance under this Agreement; and (b) all information of a competitive nature provided to a Party in connection with collocation or known to the Party as a result of access to GTE's wire center(s), central office(s) or access tandem(s) or as a result of the interconnection of Direct Communications's equipment to GTE's facilities.

#### 4.2 Handling.

In order to protect Confidential Information from improper disclosure, each Party shall not use or disclose and shall hold in confidence Confidential Information and hereby agrees:

- 4.2.1 That all Confidential Information shall be and shall remain the exclusive property of the source;
- 4.2.2 To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;
- 4.2.3 To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- 4.2.4 Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;
- 4.2.5 Upon the source's request, to return or destroy promptly any copies of such Confidential Information at its request; and
- 4.2.6 To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

#### 4.3 Exceptions.

These obligations shall not apply to any Confidential Information that: (a) was legally in the recipient's possession prior to receipt from the source; (b) was received in good faith from a third party not subject to a confidential obligation to the source; (c) now is or later becomes publicly known through no breach of confidential obligation by the recipient; (d) was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source; (e) or is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements. GTE reserves the right to provide to any information service provider a list of any and all telecommunications providers doing

business with GTE. Nothing in this Section 4 is intended to expand or limit the Parties' rights and obligations under Section 222 of the Act.

4.4 Survival.

The obligation of confidentiality and use with respect to Confidential Information disclosed by one party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

5. Miscellaneous.

5.1 Binding Effect.

This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

5.2 Consent.

Where consent, approval, or mutual agreement is required of a Party, it shall not be conditional, unreasonably withheld, or delayed.

5.3 Expenses.

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

5.4 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 likes 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 nonperformance and both Parties shall proceed whenever such causes are removed or cease.

5.5 Good Faith Performance.

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld or delayed.

5.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the Telecommunications Act of 1996, applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.

5.7 Headings.

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

5.8 Independent Contractor Relationship.

The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding.

5.9 Multiple Counterparts.

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

5.10 No Third Party Beneficiaries.

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

5.11 Notices.

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, Internet or electronic messaging system, which shall be effective if sent before 5:00 p.m. on that day, or if sent after 5:00 p.m. it will be effective on the next Business Day following the date sent, *provided, however*, that any such notice shall be confirmed via personal delivery, regular U.S. Mail or certified mail/courier service. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address or Internet ID indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to GTE:

GTE South Incorporated  
Attention: Assistant Vice President/Associate General Counsel  
Service Corporation  
600 Hidden Ridge - HQEWMNOTICES  
Irving, TX 75038  
Telephone number: 972/718-6361  
Facsimile number: 972/718-3403  
Internet Address: [wmnotices@telops.gte.com](mailto:wmnotices@telops.gte.com)

and



GTE South Incorporated  
Attn: Director-Wholesale Contract Compliance  
Network Services  
600 Hidden Ridge - HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972/718-5988  
Facsimile Number: 972/719-1519  
Internet Address: wmnotices@telops.gte.com

If to Direct Communications:

Direct Communications Corporation  
Attention: Chad Elmore - CEO  
1980 Apostolic Ridge Rd.  
Liberty, KY 42539  
Telephone number: 606/787-1447  
Facsimile number: 606/787-6177

5.12 Publicity.

Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of services, or facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both GTE and Direct Communications.

5.13 Rule of Construction.

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement. All references to sections, exhibits, attachments, appendices, etc. shall be deemed to be references to sections, exhibits, attachments, appendices, etc. of this Agreement, as amended or superseded from time to time, unless the context shall otherwise require. Each Party hereby incorporates by reference those provisions of its tariffs that govern the provision of any of the services or facilities provided hereunder. If any provision of this Agreement and an applicable tariff or any schedule, exhibit or appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement shall prevail, provided that in all cases the more specific shall prevail over the more general. The fact that a condition, right, obligation, or other terms appears in this Agreement, but not in any such applicable tariff or any such schedule, exhibit or appendix hereto, shall not alone be interpreted as, or alone be deemed grounds for finding, a conflict.

5.14 Section References.

Except as otherwise specified, references within an Article, Attachment or Appendix of this Agreement to a Section refer to Sections within that same respective Article, Attachment or Appendix.

5.15 Attachments.

All attachments, appendices, exhibits and schedules attached hereto are deemed to be an integral part of this Agreement, and all references to the term Agreement herein shall be deemed to include such attachments, appendices, exhibits and schedules.

5.16 Subcontractors.

Provider may enter into subcontracts with third parties or Affiliates for the performance of any of Provider's duties or obligations under this Agreement.

5.17 Trademarks and Trade Names.

Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever.

5.18 Waiver.

The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

5.19 Amendments.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

5.20 Assignment.

Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.

5.21 Authority.

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing and Direct Communications has not relied on GTE counsel, pursuant to this Agreement.

5.22 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

**(THIS PAGE IS INTENTIONALLY LEFT BLANK—RESERVED FOR FUTURE USE)**

SIGNATURE PAGE

IN WITNESS WHEREOF, each Party has executed this Agreement effective on the Effective Date described above.

GTE SOUTH INCORPORATED

DIRECT COMMUNICATIONS CORPORATION

By *Steven J. Pitterle*

By *Chad Elmore*

Name Steven J. Pitterle

Name Chad Elmore

Title Director-Negotiations  
Wholesale Markets

Title President / CEO

Date 6/29/00

Date 6-27-00

|                    |         |
|--------------------|---------|
| APPROVED BY        |         |
| LEGAL COUNSEL      |         |
| <i>[Signature]</i> | 6/16/00 |
| ATTORNEY           | DATE    |

## **APPENDIX A TO ARTICLES I & II GLOSSARY**

### **911 Service**

A universal telephone number which gives the public direct access to the Public Safety Answering Point (PSAP). Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

### **Access Service Request (ASR)**

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of Interconnection.

### **Act**

The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized rules and regulations of the FCC or the Commission.

### **Affiliate**

A person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party. For purposes of this paragraph, the term "own" means an equity interest (or the equivalent thereof) of more than ten percent.

### **Answer Supervision**

An off-hook supervisory signal.

### **Applicable Law**

All laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any Governmental Authority, which apply or relate to the subject matter of this Agreement, and are applicable to each Party's performance of its obligations hereunder.

### **As-Is Transfer (AIT)**

The transfer of all Telecommunications Services and features available for resale, that are currently being provided for a specific account, without the requirements of a specific enumeration of the services and features on the Local Service Request (LSR).

### **Automatic Location Identification/Data Management System (ALI/DMS)**

The emergency services (E-911/911) database containing Customer location information (including name, address, telephone number, and sometimes-special information from the local service Provider) used to process subscriber access records into Automatic Location Identification (ALI) records. From this database, records are forwarded to GTE's ALI Gateway for downloading by local ALI database systems to be available for retrieval in response to Automatic Number Identification (ANI) from a 9-1-1 call. Also, from this database, GTE will upload to its selective routers the selective router ALI (SR/ALI) which is used to determine to which Public Safety Answering Point (PSAP) to route the call.

### **Automated Message Accounting (AMA)**

The structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Telcordia Technologies as GR-1100-CORE which defines the industry standard for message recording.

### **Automatic Number Identification (ANI)**

The signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

### **Basic Local Exchange Service**

Voice grade access to the network that provides: the ability to place and receive calls; touch-tone service, access to operator services; access to directory assistance; access to emergency services (E911); access to telephone relay service (TRS); access to Interexchange Carriers of the Customer's choice; standard white pages directory listing; and toll blocking for low-income consumers participating in Lifeline (subject to technical feasibility).

### **Bill-and-Keep Arrangement**

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from End-Users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

### **Bona Fide Request (BFR)**

A process for Direct Communications to request certain services, features, capabilities or functionality, associated with unbundled network elements, that are not currently offered in the Agreement.

### **Business Day**

Monday through Friday, except for holidays on which the U.S. mail is not delivered.

### **Central Office Switch**

A switch used to provide telecommunications services including but not limited to (1) End Office Switches which are Class 5 switches from which end-user Exchange Services are directly connected and offered, and (2) Tandem Office Switches which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

### **Centralized Message Distribution System (CMDS)**

The billing record and clearing house transport system that the Regional Bell Operating Companies (RBOCs) and other incumbent LECs use to efficiently exchange out collects and in collects as well as Carrier Access Billing System (CABS) records.

### **CLLI Codes**

Common Language Location Identifier Codes.

## **Commission**

Kentucky Public Service Commission.

## **Common Channel Signaling (CCS)**

A high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.

## **Competitive Local Exchange Carrier (CLEC)**

Any company or person authorized to provide local exchange services in competition with an ILEC.

## **Compliance**

Environmental and safety laws and regulations based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.

## **Conversation Time**

The time that both Parties' equipment is used for a completed call measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.

## **Currently Available**

Existing as part of GTE's network at the time of the requested order or service and does not include any service, feature, function or capability that GTE either does not provide to itself or to its own End-Users, or does not have the capability to provide.

## **Customer**

A third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties, or by another Telecommunications Service provider, and does not resell it to others.

## **Customer Service Record Search**

Applied to LSR when CLEC requests a Customer service record search prior to account conversion from GTE or from another CLEC. Search typically is for basic account information, listing/directory information, service and equipment listing, and billing information. Applied on a per requested loop and/or port basis.

## **Dedicated Transport**

An Unbundled Network Element that is purchased for the purpose of transporting Telecommunication Services between designated Serving Wire Centers (SWC). Dedicated Transport may extend between two GTE SWCs (Interoffice Dedicated Transport or IDT) or may extend from the GTE SWC to the CLEC premise (CLEC Dedicated Transport or CDT). CDT remains within the exchange boundaries of the SWC, while IDT traverses exchange boundaries.

## **Disconnect Supervision**

An on-hook supervisory signal end at the completion of a call.

### **DS-1 or Digital Signal Level**

A service transmitted at digital signal rate of 1.544 Mbps in the first level signal of the time-division multiplex hierarchy.

### **DS-3 or Digital Signal Level 3**

A service transmitted at digital signal rate of 44.736 Mbps, in the third-level signal of the time-division multiplex hierarchy.

### **Electronic File Transfer**

A system or process that utilizes an electronic format and protocol to send/receive data files.

### **End Office Switches**

Switches that are Class 5 switches from which end-user Exchange Services are directly connected and offered.

### **Enhanced Service Provider (ESP )/Internet Service Provider (ISP) Traffic**

Traffic bound to any Enhanced Service Provider or Internet Service Provider. ESP/ISP Traffic is separate and distinct from Local Traffic.

### **E-911 Service**

A method of routing 911 calls to a PSAP that uses a Customer location database to determine the location to which a call should be routed. E-911 service includes the forwarding of the caller's Automatic Number Identification (ANI) to the PSAP where the ANI is used to retrieve and display the Automatic Location Identification (ALI) on a terminal screen at the answering Attendant's position. It usually includes selective routing.

### **Exchange Message Interface (EMI)**

Standard used for the interexchange of telecommunications message information between exchange carriers and interexchange carriers for billable, nonbillable, sample, settlement and study data. Data is provided between companies via a unique record layout that contains Customer billing information, account summary and tracking analysis. GMI format is contained in document SR-320 published by the Alliance for Telecom Industry Solutions.

### **Exchange Access**

The offering of access to telephone exchange services or facilities for the purpose of the origination or termination of the telephone toll services.

### **Expanded Interconnection Service (EIS)**

A service that provides interconnecting carriers with the capability to terminate basic fiber optic transmission facilities, including optical terminating equipment and multiplexers, at GTE's wire centers and access tandems and interconnect those facilities with the facilities of GTE. Microwave is available on a case-by-case basis where feasible.



**Facility**

All buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same persons or person as used in Article II, Section 2.2.

**FCC**

The Federal Communications Commission, or any successory agency of the United States government; provided such succession has assumed such duties and responsibilities of the former FCC.

**Generator**

Under the Resource Conservation Recovery Act (RCRA), the person whose act produces a hazardous waste (40 CFR 261) or whose act first causes a hazardous waste to become subject to regulation. The generator is legally responsible for the proper management and disposal of hazardous wastes in accordance with regulations (see reference in Article II, Section 2.2).

**GTE Guide**

The GTE internet web site which contains GTE's operating practices and procedures and general information for pre-ordering, ordering, provisioning, repair and billing for resold services and unbundled elements and guidelines for obtaining interconnection with GTE's switched network.

**GTOC**

GTE Telephone Operating Company.

**Imminent Danger**

As described in the Occupational Safety and Health Act and expanded for environmental matters, any conditions or practices at a facility which are such that a danger exists which could reasonably be expected to cause death or serious harm or significant damage to the environment or natural resources.

**Incumbent Local Exchange Carrier (ILEC)**

Any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. (69.601(b) of the FCC's regulations.

**Initial Service Order**

A charge applied to each LSR of Unbundled Loops and/or Ports with the exception of Subsequent Service Order changes to existing CLEC accounts.

**Interconnection Facility**

See "Internetwork Facilities".

**Interconnection Point (IP)**

The physical point on the network where the two parties interconnect. The IP is the demarcation point between ownership of the transmission facility.

### **Interexchange Carrier (IXC)**

A telecommunications service Provider authorized by the FCC to provide interstate long distance communications services between LATAs and is authorized by the State to provide InterLATA and/or IntraLATA long distance communications services within the State.

### **Internet Traffic**

Traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

### **Interim Number Portability (INP)**

The delivery of Local Number Portability (LNP) capabilities, from a Customer standpoint in terms of call completion, with as little impairment of functioning, quality, reliability, and convenience as possible and from a carrier standpoint in terms of compensation, through the use of existing and available call routing, forwarding, and addressing capabilities.

### **InterLATA**

Telecommunications services between a point located in a local access and transport area and a point located outside such areas.

### **Internetwork Facilities**

The physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of Exchange Service and Exchange Access.

### **IntraLATA**

Telecommunications services that originate and terminate at a point within the same local access and transport area.

### **ISDN User Part (ISUP)**

A part of the SS7 protocol that defines call setup messages and call takedown messages.

### **Line Information Data Base (LIDB)**

One or all, as the context may require, of the Line Information databases owned individually by GTE and other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by GTE and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

### **Line Side**

Refers to an end office switch connection that has been programmed to treat the circuit as a local line connected to an ordinary telephone station set. Line side connections offer only those transmission and signaling features appropriate for a connection between an end office and an ordinary telephone set.

### **Local Access and Transport Area (LATA)**

A contiguous geographic area for the provision and administration of communications service; i.e., intraLATA or interLATA. Established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than one

metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree dated August 24, 1982; or established or modified by a Bell operating company after such date of enactment and approved by the FCC.

**Local Exchange Carrier (LEC)**

Any person that is engaged in the provision of telephone Exchange Service or Exchange Access.

**Exchange Routing Guide (LERG)**

The Telcordia Technologies reference customarily used to identify NPANXX routing and homing information, as well as network element and equipment designation.

**Local Number Portability (LNP)**

The ability of users of Telecommunications Services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

**Local Service Request (LSR)**

The industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold services and Unbundled Network Elements for the purposes of competitive local services.

**Local Traffic**

For purposes of compensation between the Parties, Local Traffic is GTE Traffic that terminates to Direct Communications and Direct Communications traffic that terminates to GTE, that is within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that provides End-Users a local calling scope, i.e. Extended Area Service (EAS), beyond their basic exchange serving area. The Parties agree that the points of call origination and termination shall be used to determine Local Traffic, and agree to use the Rate Center assignments of the calling and called NPA/NXX's as shown in the LERG to make such determination. Local Traffic does not include optional local calling scopes, i.e. optional rate packages that permit the End-User to choose a local calling scope beyond their basic exchange serving area for an additional fee, referred to hereafter as "optional EAS". Local Traffic does not include Enhanced Service Provider (ESP) and Internet Service Provider (ISP) traffic, in addition to, but not limited to, it excludes Internet traffic, 900/976, etc., and Internet Protocol (IP) based voice or fax telephony.

**Loop Facility Charge**

A charge applied to LSRs when fieldwork is required for establishment of unbundled loop service. Applied on a per LSR basis.

**Main Distribution Frame (MDF)**

The primary point at which outside plant facilities terminate within a Wire Center, for interconnection to other telecommunications facilities within the Wire Center. The distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.

### **Meet-Point Billing (MPB)**

Refers to an arrangement whereby two LECs jointly provide the transport element of a switched access service to one of the LEC's end office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by the effective access tariffs.

### **Mid-Span Fiber Meet**

An Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed upon IP.

### **Multiple Exchange Carrier Access Billing (MECAB)**

Refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by [BellCore] Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs, or by one LEC in two or more states within a single LATA.

### **Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface (MECOD)**

A document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by [BellCore] Telcordia Technologies as Special Report SR-STC-002643, establishes methods for processing orders for access service that is to be provided by two or more LECs.

### **Network Interface Device (NID)**

The GTE provided interface terminating GTE's telecommunication network on the property where the customer's End-User service is located at a point determined by GTE. The NID contains an FCC Part 68 registered jack from which inside wire may be connected to GTE's network. The point of demarcation between the End-User's inside wiring and GTE's facilities.

### **North American Numbering Plan (NANP)**

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands that employ NPA 809. The format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

### **Numbering Plan Area (NPA)**

Also sometimes referred to as an area code, is the three-digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

### **NXX, NXX Code, Central Office Code or CO Code**

The three-digit switch entity indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers. It is the first three digits of a seven-digit telephone number.

### **Owner or Operator**

As used in OSHA regulations, owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building or facility. As used in the Resource Conservation and Recovery Act (RCRA), operator means the person responsible for the overall (or part of) the operations of a facility (see reference in Article II, Section 2.2).

### **Party/Parties**

GTE and/or Direct Communications.

### **Provider**

GTE or Direct Communications depending on the context and which Party is providing the service to the other Party.

### **Public Safety Answering Point (PSAP)**

An answering location for 9-1-1 calls originating in a given area. A PSAP may be designated as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAPs are staffed by employees of Emergency Response Agencies (ERAs) such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.

### **Public Switched Telecommunications Network (PSTN)**

The worldwide voice telephone network accessible to all those with telephones and access privileges. In the U.S., formerly known as the "Bell System network" or the "AT&T long distance network".

### **Rate Center**

The specific geographic point and corresponding exclusive geographic area that are associated with one or more particular NPA-NXX Codes that have been assigned to a LEC for its provision of Exchange Services. The geographic point is identified by a specific Vertical and Horizontal (V&H) coordinate that is used to calculate distance-sensitive End-User traffic to/from the particular NPA-NXXs associated with the specific Rate Center.

### **Right-of-way (ROW)**

The right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.

### **Routing Point**

Denotes a location that a LEC has designated on its network as the homing (routing) point for traffic that terminates to Exchange Services provided by the LEC that bear a certain NPA-NXX designation. The

Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Telcordia Technologies Practice BR795-100-100, the Routing Point may be an end office location, or a "LEC Consortium Point of Interconnection." The Routing Point must be in the same LATA as the associated NPA-NXX.

### **Service Control Point (SCP)**

The node in the Common Channel Signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from the SSP and via a Signaling Transfer Point, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

### **Service Switching Point (SSP)**

A Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific Customer services.

### **Shared Transport**

The physical interoffice facility not dedicated to any one Customer, which is used to transport a call between switching offices. A central office switch translates the End-User dialed digits and routes the call over a Common Transport Trunk Group that rides interoffice transmission facilities. These trunk groups and the associated interoffice transmission facilities are accessible by any End-User (GTE End-User or Direct Communications End-User when Direct Communications has purchased unbundled local switching), and are referred to as "shared transport facilities".

### **Signaling Point (SP)**

A node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.

### **Signaling System 7 (SS7)**

The signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute (ANSI) standards.

### **Signal Transfer Point (STP)**

A packet switch in the CCS network that is used to route signaling messages among SSPs, SCPs and other STPs in order to set up calls and to query databases for advanced services. GTE's network includes mated pairs of local and regional STPs. STPs are provided in pairs for redundancy. GTE STPs conform to ANSI T1.111-8 standards. It provides SS7 Network Access and performs SS7 message routing and screening.

### **Subsidiary**

A corporation or other legal entity that is majority owned by a Party.

### **Subsequent Service Order**

Applied to LSRs requesting a service change to an existing unbundled account (no CLEC transfer). For disconnect-only LSRs, no NRC will be applied.

### **Synchronous Optical Network (SONET)**

Synchronous electrical (STS) or optical channel (OC) connections between LECs.

### **Switched Exchange Access Service**

The offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service Customers in a given area pursuant to a switched access tariff. Switched Access Services including but not limited to: Feature Group A, Feature Group B, Feature Group C, Feature Group D, 500, 700, 800, 888 and 900 access services.

### **Tandem Office Switches**

Switches that are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches.

### **Telcordia Technologies**

Formally known as BellCore, a wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.

### **Telecommunications Services**

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.

### **Telephone Exchange Service**

(1) Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or (2) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

### **Third Party Contamination**

Environmental pollution that is not generated by the LEC or Direct Communications but results from off-site activities impacting a facility.

### **Transfer of Service**

A charge applied to LSR's that involve account changes (e.g., CLEC to CLEC transfers, DA & CPE billing changes on Unbundled Ports).

### **Trunk Side**

Refers to a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to another Central Office Switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

### **Unbundled Network Element (UNE)**

Generally a facility or equipment used in the provision of a Telecommunications Service. Specific references to UNEs contained throughout this Agreement shall be to the network elements that are to be unbundled pursuant to the UNE Attachment.

### **Undefined Terms**

Terms that may appear in this Agreement which are not defined. Parties acknowledge and agree that any such terms shall be construed in accordance with customary usage in the telecommunications industry as of the effective date of this Agreement.

### **Vertical Features (including CLASS Features)**

Vertical services and switch functionalities provided to GTE's retail customers, including but not limited to: Automatic Call Back; Automatic Recall; Call Forwarding Busy Line/Don't Answer; Call Forwarding Don't Answer; Call Forwarding Variable; Call Forwarding - Busy Line; Call Trace; Call Waiting; Call Number Delivery Blocking Per Call; Calling Number Blocking Per Line; Cancel Call Waiting; Distinctive Ringing/Call Waiting; Incoming Call Line Identification Delivery; Selective Call Forward; Selective Call Rejection; Speed Calling; and Three Way Calling/Call Transfer.

### **Wire Center**

A building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched. Wire Center can also denote a building in which one or more Central Offices, used for the provision of Exchange Services and Exchange Access Services, are located.



## RESALE ATTACHMENT

### 1. General.

This Resale Attachment (Attachment), together with Articles I and II, defines the Telecommunication Services (including exchange Services, related Vertical Features and other services that may be purchased from GTE and resold by Direct Communications) and sets forth the terms and conditions applicable to such resold services. Except as specifically provided otherwise in this Agreement, provisioning of exchange Services for resale will be governed by the GTE Guide. GTE will make available to Direct Communications for resale any Telecommunications Service that GTE currently offers, or may offer hereafter, on a retail basis to Customers that are not telecommunications carriers, except as qualified by Section 3.2.2 below. GTE will provide resold Services at retail less the avoided cost discount as defined in Section 4.1.1. The resale Services described in this Attachment, shall be referred to herein collectively as "Services", or each individually as "Service".

### 2. Services.

#### 2.1 Local Exchange Services.

Resold basic exchange Service includes, but is not limited to, the following elements:

- 2.1.1 Voice Grade Local Exchange Access Line - includes a telephone number and dial tone;
- 2.1.2 Local Calling - at local usage measured rates if applicable to the Customer;
- 2.1.3 Access to long distance carriers;
- 2.1.4 E-911 Emergency Dialing;
- 2.1.5 Access to Service Access Codes - e.g., 800, 888, 900;
- 2.1.6 Use of AIN Services (those Currently Available to Customers);
- 2.1.7 Customer Private Line Services;
- 2.1.8 Listing of telephone number in appropriate "white pages" directory;
- 2.1.9 Copy of "White Pages" and "Yellow Pages" directories for the appropriate GTE service area; and
- 2.1.10 IntraLATA toll.

#### 2.2 Other Services Available for Resale.

Subject to the limitations enumerated in this Attachment, the type of Services made available to Direct Communications are those Telecommunications Services described in GTE's retail tariffs, as amended from time to time. Any new retail Services that GTE offers in such tariffs to Customers who are not telecommunications carriers may also be available to Direct Communications for resale under the same terms and conditions contained in this Agreement.

### 2.3 Promotional Offerings.

GTE shall make available for resale, those promotional offerings that are greater than 90 calendar days in duration and the special promotional rate will be subject to the applicable resale discount. GTE also shall make available for resale those promotional offerings that are 90 calendar days or less in duration; provided, however, that no resale discount applies to the special promotional rate of such offerings.

### 2.4 Grandfathered Services.

Services identified in GTE tariffs as grandfathered in any manner are available for resale only to Customers that already have such grandfathered Service. An existing Customer may not move a grandfathered Service to a new service location. Grandfathered Services are subject to a resale discount.

### 2.5 Operator Services (OS) and Directory Assistance (DA).

OS for local and toll assistance (e.g., call completion, busy line verification and emergency interruption) and DA (e.g., 411 calls) are provided as a part of exchange Services offered for resale. GTE may brand this Service as GTE. Direct Communications will be billed in accordance with GTE's retail tariff. If Direct Communications requests branding or unbranding, GTE will provide such unbranding or rebranding with Direct Communications's name using customized routing as described in Section 3.7. For those offices that Direct Communications has requested GTE to rebrand and/or unbrand OS and DA, GTE will provide it where GTE performs its own OS and DA Service subject to capability and capacity limitations where customized routing is Currently Available. If GTE uses a third-party contractor to provide OS or DA, GTE will not provide branding nor will GTE negotiate it with a third-party on behalf of Direct Communications. Direct Communications must negotiate with the third party. In these instances, Direct Communications will need to purchase customized routing and dedicated trunking to differentiate its OS/DA traffic from GTE's. GTE shall include a Direct Communications Customer listing in its DA database as part of the LSR process. GTE will honor Direct Communications Customer's preferences for listing status, including non-published and unlisted, and will enter the listing in the GTE database which is used to perform DA functions as it appears on the LSR.

### 2.6 Telephone Relay Service.

Local and intraLATA telephone relay service (TRS) enables deaf, hearing-impaired, or speech-impaired TRS users to reach other telephone users. With respect to resold Services, Direct Communications's Customers will have access to the state authorized TRS Provider to the extent required by the Commission, including any applicable compensation surcharges.

## 3. Operations and Administrative Matters.

### 3.1 Service Ordering, Service Provisioning, and Billing.

3.1.1 GTE Guide and CLEC Profile. Direct Communications will order Services for resale directly from GTE through an electronic interface or fax. Except as specifically provided otherwise in this Agreement, Service preordering, ordering, provisioning, billing, maintenance and electronic interfaces shall be governed by the GTE Guide. In accordance with Article I, Section 3.1, GTE will not process resale orders until the Direct Communications Profile has been completed and returned; and, if required, an advanced deposit paid.

3.1.2 Local Service Request. Orders for Services will be placed utilizing standard LSR forms. GTE will continue to participate in industry forums for developing service order/disconnect order formats and will incorporate appropriate industry standards. Complete and accurate forms (containing the requisite Customer information as described in the GTE Guide) must be provided by Direct Communications before a request can be processed. GTE will accept orders for As-Is Transfers (AIT) of Services from GTE to Direct Communications where GTE is the Customer's current local exchange company. GTE cannot provide an AIT of service from another CLEC selling GTE's Services to Direct Communications.

3.1.3 Letter of Authorization (LOA). GTE will not release the Customer service record (CSR) or inquiry containing Customer proprietary network information (CPNI) to Direct Communications on GTE Customer accounts unless Direct Communications first provides to GTE a written LOA. Such LOA may be a blanket LOA or other form agreed upon between GTE and Direct Communications authorizing the release of such information to Direct Communications or if state or federal law provides otherwise, in accordance with such law. An LOA will be required before GTE will process an order for Services provided in cases in which the Customer currently receives local exchange or Exchange Access service from GTE or from a CLEC other than Direct Communications. Such LOA may be a blanket LOA or such other form as agreed upon between GTE and Direct Communications.

3.1.4 Unauthorized Changes. If Direct Communications submits an order for resold Services under this Agreement in order to provide Service to a Customer that, at the time the order is submitted, is obtaining its local Services from GTE or another LEC using GTE Services, and the Customer notifies GTE that the Customer did not authorize Direct Communications to provide local exchange Services to the Customer, Direct Communications must provide GTE with written documentation of authorization from that Customer within thirty (30) Business Days of notification by GTE. If Direct Communications cannot provide written documentation of authorization within such time frame, Direct Communications must within three (3) Business Days thereafter:

3.1.4.1 notify GTE to change the Customer back to the LEC providing Service to the Customer before the change to Direct Communications was made; and

3.1.4.2 provide any Customer information and billing records Direct Communications has obtained relating to the Customer to the LEC previously serving the Customer; and

3.1.4.3 notify the Customer and GTE that the change back to the previous LEC has been made.

Furthermore, GTE will bill Direct Communications fifty dollars (\$50) per affected line to compensate GTE for switching the Customer back to the original LEC.

3.1.5 Transfers Between Direct Communications and Another Reseller of GTE Services. When Direct Communications has obtained a Customer from another reseller of GTE Services, Direct Communications will inform GTE of the transfer by submitting standard LSR forms to GTE. GTE cannot accept an order for AIT of service from one CLEC reselling GTE Services to another reseller of GTE Services.

3.2 Regulations and Restrictions.

3.2.1 General Regulations. General regulations, terms and conditions governing rate applications, technical parameters, service availability, definitions and feature interactions, as described in the appropriate GTE intrastate local, toll and access tariffs, apply to retail Services made available by GTE to Direct Communications for resale provided by GTE to Direct Communications, when appropriate, unless otherwise specified in this Agreement. As applied to Services offered under this Agreement, the term "Customer" contained in the GTE retail tariff shall be deemed to mean "Direct Communications" as defined in this Agreement.

3.2.2 Restrictions on Resale. The following restrictions shall apply to the resale of retail Services by Direct Communications:

3.2.2.1 Direct Communications shall not resell to one class of Customers a Service that is offered by GTE only to another class of Customers in accordance with state requirements (e.g., R1 to B1, disabled Services or lifeline Services to non-qualifying Customers);

3.2.2.2 Direct Communications shall not resell lifeline Services and Services for the disabled. Where Direct Communications desires to provide lifeline Services or Services for the disabled to its Customer, GTE will resell the Customer's line as a R-1 (with applicable resale discount) and Direct Communications shall be responsible for recertifying the line pursuant to applicable law and for participating in the lifeline or disabled Services discount pool without the assistance of GTE. In no event shall GTE be responsible for recovering or assisting in the recovery of lifeline or disabled Services discounts on behalf of Direct Communications.

3.2.3 Restrictions on Discount. The discount specified in Section 4.1.1 herein shall apply to all retail Services except for the following:

3.2.3.1 Direct Communications may resell promotional offerings of 90 calendar days or less in duration; provided, however, no retail discount applies to the special promotional rate.

3.2.3.2 Direct Communications may resell Services that are provided at a volume discount in accordance with terms and conditions of applicable tariff. Direct Communications shall not aggregate Customer lines and/or traffic in order to qualify for volume discount.

3.2.3.3 Direct Communications may resell ICB/Contract Services without a discount and only to Customers that already have such Services.

3.2.3.4 Direct Communications may resell Customer owned coin operated telephone (COCOT) coin or coinless line; however, no discount applies.

3.2.3.5 Direct Communications may resell special access; however, no discount applies.

3.2.3.6 Direct Communications may resell operator Services and directory assistance as specified in Section 2.5 however, no discount applies unless otherwise specified in Appendix A.

3.2.4 Resale to Other Carriers. Services available for resale may not be used by Direct Communications to provide access to the local network as an alternative to tariffed switched and special access by other carriers, including, but not limited to: interexchange carriers, wireless carriers, competitive access providers, or other retail telecommunications providers.

3.3 Maintenance.

GTE will provide repair and maintenance Services to Direct Communications and its Customers for resold Services in accordance with the same standards and charges used for such Services provided to GTE Customers. GTE will not initiate a maintenance call or take action in response to a trouble report from a Direct Communications Customer until such time as trouble is reported to GTE by Direct Communications. Direct Communications must provide to GTE all Customer information necessary for the installation, repair and servicing of any facilities used for resold Services according to the procedures described in the GTE Guide.

3.4 Information Services Traffic.

GTE shall route traffic for information Services (i.e., 900-976, Internet, weather lines, sports providers, etc.) that originates on its network to the appropriate information service platform. In the event GTE performs switching of information service provider (ISP) traffic associated with resale for Direct Communications, GTE shall provide to Direct Communications the same call detail records that GTE records for its own Customers, so as to allow Direct Communications to bill its Customers. GTE shall not be responsible or liable to Direct Communications or ISP for billing and collection and/or any receivables of ISP.

3.5 Originating Line Number Screening (OLNS).

Upon request, GTE will update the database to provide OLNS which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

3.6 Misdirected Calls.

The Parties will employ the following procedures for handling any misdirected calls (e.g., business office, repair bureau, etc.):

3.6.1 To the extent the correct provider can be determined, each Party will refer misdirected calls to the proper provider of local exchange Service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.

3.6.2 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the Customer the correct contact number.

3.6.3 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit Customers or to market Service.

### 3.7 Customized Routing.

Where Currently Available and upon receipt of a written request from Direct Communications, GTE agrees to provide customized routing for the following types of calls:

- 0-
- 0+Local
- 0+411
- 1+411
- 0+HNPA-555-1212 (intraLATA, only when intraLATA presubscription is not available)
- 1+HNPA-555-1212 (intraLATA, only when intraLATA presubscription is not available).

Upon request, GTE will provide Direct Communications a list of switches that can provide customized routing using line class codes or similar method (regardless of current capacity limitations). Direct Communications will return a list of these switches ranked in priority order. GTE will return to Direct Communications a schedule for customized routing in the switches with existing capabilities and capacity. In response to the written request from Direct Communications, GTE will provide Direct Communications with applicable charges, and terms and conditions, for providing OS and DA, branding, and customized routing. Subject to the above provisions, GTE will choose the method of implementing customized routing of OS and DA calls. When GTE agrees to provide customized routing to Direct Communications, Direct Communications will be responsible for the transport to route OS/DA traffic to the designated platform.

### 3.8 900-976 Call Blocking.

GTE shall not unilaterally block 900-976 traffic in which GTE performs switching associated with resale. GTE will block 900-976 traffic when requested to do so, in writing, by Direct Communications. Direct Communications shall be responsible for all costs associated with the 900-976 call blocking request. GTE reserves the right to block any and all calls which may harm or damage its network.

## 4. Financial Matters.

### 4.1 Rates and Charges.

4.1.1 Calculation of Rates. The prices charged to Direct Communications for local Services shall be calculated as follows:

4.1.1.1 Avoided cost discount as shown in Appendix A shall apply to all retail Services except those Services listed in Sections 3.2.3.

4.1.1.2 The discount dollar amount calculated under Section 4.1.1.1 will be deducted from the retail rate.

4.1.1.3 The resulting rate is the resale rate.

4.1.2 Nonrecurring Charges. Direct Communications shall be responsible for the payment of all nonrecurring charges (NRCs) applicable to resold Services (e.g., installation, changes, ordering charges) as listed in Appendix A. In addition, NRCs for field service work (installation/repair) requiring on-site visits will be charged from the appropriate tariff. No discount applies to nonrecurring charges.

- 4.1.3 Access. GTE retains all revenue due from other carriers for access to GTE facilities, including both switched and special access charges.
- 4.1.4 Branding. GTE shall provide to Direct Communications the applicable charges for unbranding or rebranding and customized routing as set forth in Section 3.7.

#### 4.2 Billing.

4.2.1 General. GTE will utilize CBSS to produce the required bills for resold Services. CBSS will create a bill to Direct Communications along with a summary bill master. State or sub-state level billing will include up to thirty (30) summary bill accounts.

4.2.2 Alternate Billed Calls. GTE shall record usage data originating from Direct Communications Customers that GTE records with respect to its own retail Customers, using Services ordered by Direct Communications. On resale accounts, GTE will provide usage in EMR format per existing file exchange schedules. Incollects are calls that are placed using the Services of GTE or another LEC and billed to a resale service line of Direct Communications. Outcollects are calls that are placed using a Direct Communications resale Service line and billed to a GTE line or line of another LEC or LSP. Examples of an incollect or an outcollect are collect, credit card calls.

4.2.2.1 Incollects. GTE will provide the rated record it receives from the CMDS network, or which GTE records (non-intercompany), to Direct Communications for billing to Direct Communications's end- users. GTE will settle with the earning company, and will bill Direct Communications the amount of each incollect record less the billing and collection (B&C) fee for Customer billing of the incollects. The B&C credit will be \$.05 per billed message. Any additional message processing fees associated with Direct Communications's incollect messages that are incurred by GTE will be billed to Direct Communications on the monthly statement.

4.2.2.2 Outcollects. When the GTE end-office switch from which the resale line is served utilizes a GTE operator Services platform, GTE will provide to Direct Communications the unrated message detail that originates from a Direct Communications resale Service line but which is billed to a telephone number other than the originating number (e.g., calling card, bill-to-third number, etc.). Direct Communications as the LSP will be deemed the earning company and will be responsible for rating the message at Direct Communications rates and Direct Communications will be responsible for providing the billing message detail to the billing company for Customer billing. Direct Communications will pay to GTE charges as agreed to for Services purchased, and Direct Communications will be compensated by the billing company for the revenue which Direct Communications is due.

When a non-GTE entity provides operator Service to the GTE end office from which the resale line is provisioned, Direct Communications must contract with the operator Services provider to get any EMR records which Direct Communications requires.

4.2.3 Local Calling Detail. Except for those Services and in those areas where measured rate local Service is available to Customers, monthly billing to Direct Communications does not include local calling detail. However, Direct Communications may request and GTE shall consider developing the capabilities

to provide local calling detail in those areas where measured local Service is not available for a mutually agreeable charge.

- 4.2.4 LIDB. For resale Services, the LSR will generate updates to GTE's LIDB for validation of calling card, collect, and third number billed calls.
- 4.2.5 Timing of Messages. With respect to GTE resold measured rate local Service(s), chargeable time begins when a connection is established between the calling station and the called station. Chargeable time ends when the calling station "hangs up," thereby releasing the network connection. If the called station "hangs up" but the calling station does not, chargeable time ends when the network connection is released by automatic timing equipment in the network.



**APPENDIX A TO THE RESALE ATTACHMENT  
SERVICES AVAILABLE FOR RESALE**

General. The rates for resold services are based upon an avoided cost discount from GTE's retail rates. The avoided cost discount is based upon GTE's most current available cost studies and are subject to change resulting from future Commission or other proceedings, including but not limited to any generic proceeding to determine GTE's unrecovered costs (e.g., historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered GTE costs (including GTE's interim Universal Service Support Surcharge)), the establishment of a competitively neutral universal service system, or any appeal or other litigation.

Interim Universal Service Charge. It is GTE's position that GTE's current intraLATA toll rates include implicit subsidies that support below-cost prices for other services and thus promote universal service. This universal service support is lost where a CLEC resells GTE's local service but does not resell GTE's intraLATA toll service. For this reason, GTE will not resell basic exchange residential or business services unless Direct Communications pays the monthly interim universal service support charge set forth in Appendix A. GTE believes that this interim surcharge is required by state and federal law. The lawfulness of GTE's interim surcharge is being addressed (or will be addressed) by the Commission or a court of competent jurisdiction. The parties agree that GTE will offer for resale basic exchange residential and business services at the avoided cost discount rate set forth in Appendix A without the interim surcharge, but subject to the following terms and conditions:

- A. Direct Communications agrees that within thirty (30) calendar days after the effective date of a Commission or court order affirming GTE's interim surcharge, Direct Communications will (i) begin paying the monthly interim surcharge in accord with Appendix A, and (ii) make a lump sum payment to GTE of the total interim surcharges retroactive to the effective date of this Agreement.
- B. Notwithstanding any provision in this Agreement, GTE may, at its sole discretion and at any time, seek injunctive or other relief (i) requiring Direct Communications to pay GTE's interim surcharge or (ii) requiring the Commission to immediately impose the interim surcharge.
- C. Nothing in this Agreement shall restrict or impair GTE from seeking injunctive relief or any other remedy at any time and in any court regarding GTE's interim surcharge or the Commission's rejection or modification of GTE's interim surcharge.

The avoided cost discount for all services, excluding OS/DA, is 15.95%.

**Non-Recurring Charges (NRCs) for Resale Services**

Pre-ordering

|                                     |           |
|-------------------------------------|-----------|
| CLEC Account Establishment Per CLEC | \$ 273.09 |
| Customer Record Search Per Account  | \$ 11.69  |

Ordering and Provisioning

|  |           |
|--|-----------|
| Engineered Initial Service Order (ISO) - New Service | \$ 311.98 |
| Engineered Initial Service Order - As Specified      | \$ 123.84 |
| Engineered Subsequent Service Order                  | \$ 59.61  |
| Non-Engineered Initial Service Order - New Service   | \$ 42.50  |
| Non-Engineered Initial Service Order - Changeover    | \$ 21.62  |

|   |          |
|---|----------|
| Non-Engineered Initial Service Order - As Specified | \$ 82.13 |
| Non-Engineered Subsequent Service Order             | \$ 19.55 |
| Central Office Connect                              | \$ 12.21 |
| Outside Facility Connect                            | \$ 68.30 |
| Manual Ordering Charge                              | \$ 12.17 |

Product Specific:

NRCs, other than those for Pre-ordering, Ordering and Provisioning, and Custom Handling as listed in this Appendix, will be charged from the appropriate retail tariff. No discount applies to such NRCs.

Custom Handling:

|   |          |
|---|----------|
| Service Order Expedite:                                 |          |
| Engineered  | \$ 35.48 |
| Non-Engineered  | \$ 12.59 |
| Coordinated Conversions:                                |          |
| ISO   | \$ 17.76 |
| Central Office Connection                               | \$ 10.71 |
| Outside Facility Connection                             | \$ 9.59  |
| Hot Coordinated Conversion First Hour:                  |          |
| ISO   | \$ 30.55 |
| Central Office Connection                               | \$ 42.83 |
| Outside Facility Connection                             | \$ 38.34 |
| Hot Coordinated Conversion per Additional Quarter Hour: |          |
| ISO   | \$ 4.88  |
| Central Office Connection                               | \$ 9.43  |
| Outside Facility Connection                             | \$ 8.37  |

**Application of NRCs**

Pre-ordering:

CLEC Account Establishment is a one-time charge applied the first time that Direct Communications orders any service from this Agreement.

Customer Record Search applies when Direct Communications requests a summary of the services currently subscribed to by the end-user.

Ordering and Provisioning:

Engineered Initial Service Order - New Service applies per Local Service Request (LSR) when engineering work activity is required to complete the order, e.g. digital loops.

Non-Engineered Initial Service Order - New Service applies per LSR when no engineering work activity is required to complete the order, e.g. analog loops.

Initial Service Order - As Specified (Engineered or Non-Engineered) applies only to Complex Services for services migrating from GTE to Direct Communications. Complex Services are services that require a data gathering form or has special instructions.

Non-Engineered Initial Service Order - Changeover applies only to Basic Services for services migrating from GTE to Direct Communications. End-user service may remain the same or change.

Central Office Connect applies in addition to the ISO when physical installation is required at the central office.

Outside Facility Connect applies in addition to the ISO when incremental field work is required.

Manual Ordering Charge applies to orders that require GTE to manually enter Direct Communications's order into GTE's Secure Integrated Gateway System (SIGS), e.g. faxed orders and orders sent via physical or electronic mail.

Custom Handling (These NRCs are in addition to any Preordering or Ordering and Provisioning NRCs):

Service Order Expedite (Engineered or Non-Engineered) applies if Direct Communications requests service prior to the standard due date intervals.

Coordinated Conversion applies if Direct Communications requests notification and coordination of service cut over prior to the service becoming effective.

Hot Coordinated Conversion First Hour applies if Direct Communications requests real-time coordination of a service cut-over that takes one hour or less.

Hot Coordinated Conversion Per Additional Quarter Hour applies, in addition to the Hot Coordinated Conversion First Hour, for every 15-minute segment of real-time coordination of a service cut-over that takes more than one hour.

**Universal Service Support Surcharge**

|                        |         |
|------------------------|---------|
| Residential (per line) | \$ 4.88 |
| Business (per line)    | \$ 3.52 |