

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and US LEC of North Carolina L.L.C. ("USLEC"), a \_\_\_\_\_ corporation. This agreement may refer to either BellSouth or US LEC or both as a "party" or "parties. "

## WITNESSETH

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

WHEREAS, US LEC is an alternative local exchange telecommunications company ("ALEC" or "OLEC") authorized to provide or is intending to be authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral;

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

### I. Definitions

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

**B. Intermediary function** is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than US LEC; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or US LEC to an end user of BellSouth or US LEC.

**C. Local Traffic** is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

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

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

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

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

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

## **II. Purpose**

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral. The access and interconnection obligations contained herein enable US LEC to provide competing telecommunications service within the nine state region of BellSouth.

### **III. Term of the Agreement**

**A.** The term of this Agreement shall be two years from the date after which US LEC operates as a CLEC or beginning November 1, 1996, whichever date is earlier.

**B.** The parties agree that by no later than November 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1998.

**C.** If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later than March 1, 1997. The parties further agree that in the event the Commission does not issue its order prior to the expiration of this Agreement or if the parties continue beyond the expiration of this Agreement to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to the day after the expiration of this Agreement. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

### **IV. Local Interconnection**

**A.** The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

**B.** Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date.

**C.** Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. For purposes of developing the PLU, each party shall consider every local

call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

**D.** The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7) services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

**E.** The parties agree to accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established at each and every BellSouth access tandem within the local calling area US LEC desires to serve for interconnection to those end offices that subtend the access tandem or may elect to interconnect directly at the end offices for interconnection to end users served by that end office. BellSouth will connect at each end office or tandem inside that local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. The parties further agree that in the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate access tariff, as amended from time to time will apply.

**F.** Nothing herein shall prevent US LEC from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that if US LEC orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge US LEC the lower of the interstate or intrastate tariffed rate or promotional rate.

**G.** The parties agree to establish trunk groups from the interconnecting facilities of subsection (D) of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency. The parties agree that either no charges will be assessed or reciprocal charges will be assessed for network to network

interfaces where the parties are certified as providers of local exchange services. BellSouth's treatment of US LEC as to said charges shall be consistent with BellSouth treatment of other local exchange carriers for the same charges.

**H.** Whenever BellSouth delivers traffic to US LEC for termination on US LEC's network, if BellSouth cannot determine because of the manner in which US LEC has utilized its NXX codes whether the traffic is local or toll BellSouth will not compensate US LEC pursuant to this section but will, instead, charge US LEC originating intrastate network access service charges as reflected in BellSouth's intrastate Access Service Tariff. Notwithstanding the foregoing, BellSouth will make the appropriate billing adjustments if US LEC can provide sufficient information for BellSouth to make a determination as to whether said traffic was local or toll. If BellSouth deploys an NXX code across its local calling areas in such a manner that US LEC cannot determine whether the traffic it delivers to BellSouth is local or toll, this subsection shall apply to the parties.

**I.** If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) an ALEC other than US LEC; (2) a local exchange telecommunications company other than BellSouth ("ICO"); or (3) another telecommunications company such as a wireless telecommunications service provider, the parties agree that compensation shall be on the basis of mutual traffic exchange. The parties agree that any billing to the ICO or other telecommunications company under this section shall be pursuant to subsection **(K)** of this section.

**J.** When the parties provides an access service connection between an interexchange carrier ("IXC") and each other, each party will provide their own access services to the IXC on a multi-bill, multi-tariff meet-point basis. Each party will bill its own access services rates to the IXC with the exception of the interconnection charge. The interconnection charge will be billed by the party providing the intermediary tandem function.

**K.** The parties agree to adopt MECAB as the terms and conditions for meet point billing for all traffic to which MECAB applies, including traffic terminating to ported numbers, and to employ 30 day billing periods for said arrangements. The recording party agrees to provide to the initial billing company, at no charge, the switched access detailed usage data within a reasonable time after the usage is recorded. The initial billing company will provide the switched access summary usage data to all subsequent billing companies within 10 days of rendering the initial bill to the IXC. The parties agree that there will be technical, administrative, and implementation issues associated with achieving the intent of this subsection. As such, the parties further agree to work cooperatively toward achieving the intent of this provision within nine months of the effective date of this Agreement.

**L.** The ordering and provision of all services purchased from BellSouth by US LEC shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Facilities

Based) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

## **V. IntraLATA and InterLATA Toll Traffic Interconnection**

**A.** The delivery of intrastate toll traffic by a party to the other party shall be reciprocal and compensation will be mutual. For terminating its toll traffic on the other party's network, each party will pay BellSouth's intrastate terminating switched access rate, inclusive of the Interconnection Charge and the Carrier Common Line rate elements of the switched access rate. The parties agree that their terminating switched access rates may change during the term of this Agreement and that the appropriate rate shall be the rate in effect when the traffic is terminated.

**B.** For originating and terminating intrastate toll traffic, each party shall pay the other BellSouth's intrastate switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in BellSouth's Intrastate Access Services Tariff as that Tariff is amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call. If US LEC is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses US LEC as an interexchange carrier on a 10XXX basis, BellSouth will charge US LEC the appropriate tariff charges for originating network access services. If BellSouth is serving as the US LEC end user's presubscribed interexchange carrier or if the US LEC end user uses BellSouth as an interexchange carrier on a 10XXX basis, US LEC will charge BellSouth the appropriate BellSouth tariff charges for originating network access services.

**C.** The parties agree that to the extent US LEC provides intraLATA toll service to its customers, it may be necessary for it to interconnect to additional BellSouth access tandems that serve end offices outside the local calling area.

**D.** Each party agrees to compensate the other, pursuant to the appropriate originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to the other party.

**E.** Each party will provide to the other party the appropriate records necessary for billing intraLATA 800 customers. The records provided will be in a standard EMR format for a fee of \$0.013 per record.

**F.** If during the term of this Agreement, either party provides interLATA 800 services, it will compensate the other for the origination of such traffic pursuant to subsection D, above. Each party shall provide the appropriate records for billing pursuant to subsection E, above.

**G.** Should US LEC require 800 Access Ten Digit Screening Service from BellSouth, it shall have signaling transfer points connecting directly to BellSouth's local

or regional signaling transfer point for service control point database query information. US LEC shall utilize SS7 Signaling links, ports and usage as set forth in Attachment C-7, incorporated herein by this reference. US LEC will not utilize switched access FGD service. 800 Access Ten Digit Screening Service is an originating service that is provided via 800 Switched Access Service trunk groups from BellSouth's SSP equipped end office or access tandem providing an IXC identification function and delivery of call to the IXC based on the dialed ten digit number. The rates and charges for said service shall be as set forth in BellSouth's Intrastate Access Services Tariff as said tariff is amended from time to time during the term of this Agreement.

## **VI. Service Provider Number Portability**

**A.** Service Provider Number Portability (SPNP) is an interim service arrangement provided by each party to the other whereby an end user, who switches subscription of his local exchange service from BellSouth to US LEC, or vice versa, is permitted to retain use of his existing assigned telephone number, provided that the end user remains at the same location for his local exchange service or changes locations and service providers but stays within the same serving wire center of his existing number. SPNP is utilized when the parties are providing services via their own facilities and not through the resale of one party's telecommunications services. SPNP services are available in two arrangements, SPNP-Remote and SPNP-DID. Notwithstanding the foregoing, SPNP is not available when the end user's existing account has been denied or disconnected for nonpayment and an outstanding balance remains unpaid.

**B.** SPNP services and facilities will only be provided, where technically feasible, subject to the availability of facilities and may only be furnished from properly equipped central offices. SS7 Signaling is required for the provision of SPNP services. SPNP-DID is available from either party on either a per DS0, DS1 and DS3 basis. Where SPNP-DID is provided on a DS1 or a DS3 basis, applicable channelization rates as specified in Attachment C-16, incorporated herein by this reference. SPNP is available only for basic local exchange service.

**C.** SPNP is available only where US LEC or BellSouth is currently providing, or will begin providing concurrent with provision of SPNP, basic local exchange service to the affected end user. SPNP for a particular US LEC assigned telephone number is available only from the central office originally providing local exchange service to the end user. SPNP for a particular assigned telephone number will be disconnected when any end user, Commission, BellSouth, or US LEC initiated activity (e.g. a change in exchange boundaries) would normally result in a telephone number change had the end user retained his initial local exchange service.

**D.** SPNP-Remote is a telecommunications service whereby a call dialed to an SPNP-Remote equipped telephone number, is automatically forwarded to an assigned seven or ten digit telephone number within the local calling area as defined in Section A3 of the BellSouth General Subscriber Service Tariff. The forwarded-to

number is specified by US LEC or BellSouth, as appropriate. Where technologically feasible, the forwarding party will provide identification of the originating telephone number, via SS7 signaling, to the receiving party. Neither party guarantees, however, identification of the originating telephone number to the SPNP-Remote end user. SPNP-Remote provides a single call path for the forwarding of no more than one simultaneous call to the receiving party's specified forwarded-to number.

**E.** SPNP-DID service provides trunk side access to end office switches for direct inward dialing to other company's premises equipment from the telecommunications network to lines associated with the other company's switching equipment and must be provided on all trunks in a group arranged for inward service. A SPNP-DID trunk termination, provided with SS7 Signaling only, charge applies for each trunk voice grade equivalent. In addition, direct facilities are required from the end office where a ported number resides to the end office serving the ported end user customer. The rates for a switched local channel and switched dedicated transport apply as contained in Section E6 of BellSouth's intrastate Access Services tariff, as said Tariff is amended from time to time during the term of this Agreement. Transport mileage will be calculated as the airline distance between the end office where the number is ported and the POI using the V&H coordinate method. SPNP-DID must be established with a minimum configuration of 2 channels and one unassigned telephone number per switch, per arrangement for control purposes. Transport facilities arranged for SPNP-DID may not be mixed with any other type of trunk group, with no outgoing calls placed over said facilities. SPNP-DID will be provided only where such facilities are available and where the switching equipment of the ordering party is properly equipped. Where SPNP-DID service is required from more than one wire center or from separate trunk groups within the same wire center, such service provided from each wire center or each trunk group within the same wire center shall be considered a separate service. Only customer dialed sent paid calls will be completed to the first number of a SPNP-DID number group, however there are no restrictions on calls completed to other numbers of a SPNP-DID number group. Interface group arrangements provided for terminating the switched transport at the party's terminal location are as set forth in E6.1.3.A. of BellSouth's intrastate Access Services tariff, as amended from time to time during the term of this Agreement.

**F.** SPNP services will be provided at the charges contained in Attachment B-3 for SPNP-RCF and Attachment B-4 for SPNP-DID. Both Attachments are incorporated herein by this reference.

**G.** The calling party is responsible for payment of the applicable charges for sent-paid calls to the SPNP number. For collect, third-party, or other operator-assisted non-sent paid calls to the ported telephone number, BellSouth or US LEC is responsible for the payment of charges under the same terms and conditions for which the end user would have been liable for those charges. Either party may request that the other block collect and third party non-sent paid calls to the SPNP assigned telephone number. If the party does not request blocking, the other party will provide itemized local usage data for the billing of non-sent paid calls on the monthly bill of

usage charges, provided at the individual end user account level. The detail will include itemization of all billable usage. As an alternative to the itemized monthly bill, each party shall have the option of receiving this usage data on a daily basis via a data file transfer arrangement. This arrangement will utilize the existing industry uniform standard, known as EMR standards, for exchange of billing data. Files of usage data will be created daily for the optional service. Usage originated and recorded in the sending BellSouth RAO will be provided in unrated format. US LEC usage originated elsewhere and delivered via CMDS to the sending BellSouth RAO will be provided in rated format.

**H.** Each party is responsible for obtaining authorization from the end user for the handling of the disconnection of the end user's service, the provision of new local service and the provision of SPNP services. Each party is responsible for coordinating the provision of service with the other to assure that its switch is capable of accepting SPNP ported traffic. Each party is responsible for providing equipment and facilities that are compatible with the other's service parameters, interfaces, equipment and facilities and is required to provide sufficient terminating facilities and services at the terminating end of an SPNP call to adequately handle all traffic to that location and is solely responsible to ensure that its facilities, equipment and services do not interfere with or impair any facility, equipment, or service of the other party or any of its end users. In the event that either party determines in its sole judgment that the other party will likely impair or is impairing, or interfering with any equipment, facility or service of such party or any of its end users, that party may either refuse to provide SPNP service or terminate SPNP service that is likely to impair, is impairing or is interfering with the facility, equipment or service of the other party.

**I.** Each party is responsible for providing an appropriate intercept announcement service for any telephone numbers subscribed to SPNP services for which it is not presently providing local exchange service or terminating to an end user. Where either party chooses to disconnect or terminate any SPNP service, that party is responsible for designating the preferred standard type of announcement to be provided.

**J.** Each party will be the other's party's single point of contact for all repair calls on behalf of each party's end user. Each party reserves the right to contact the other party's customers, if reasonably deemed necessary, for maintenance purposes.

**K.** Neither party is responsible for adverse effects on any service, facility or equipment for the use of SPNP services. End-to-end transmission characteristics may vary depending on the distance and routing necessary to complete calls over SPNP facilities and the fact that another carrier is involved in the provisioning of service. Therefore, end-to-end transmission characteristics can not be specified by either party for such calls. Neither party is responsible to the other if any necessary change in protection criteria or in any of the facilities, operation, or procedures of either renders any facilities provided by the other party obsolete or renders necessary modification of the other party's equipment.

**L.** For that terminating IXC traffic ported to either party which requires use of either party's tandem switching, the tandem provider will bill the IXC tandem switching, the interconnection charge, and a portion of the transport, and the other party will bill the IXC local switching, the carrier common line and a portion of the transport. If the tandem provider is unable to provide the necessary access records to permit the other party to bill the IXCs directly for terminating access to ported numbers, then the parties agree to work cooperatively to develop a surrogate method to approximate the access minutes, and a settlement process to recover those access revenues due it as a co-provider of access services to IXCs. During the interim, while the surrogate is being developed, the tandem provider will bill the IXC full terminating switched access charges, keep the interconnection charge, tandem switching and a portion of transport, and remit the local switching, a portion of transport and CCL revenues to the other party. If a toll intraLATA call is delivered, the delivering party will pay terminating access rates to the other party. This subsection does not apply in cases where SPNP-DID is utilized for number portability.

**M.** If either party has direct connections to the IXCs for the termination of all interLATA traffic and it is only through the use of SPNP services that the tandem is being utilized and the tandem provider receives network access service revenues from the terminating IXC, the other party will bill the network access charges for the terminating facilities used for that interLATA traffic. This circumstance may also arise where an intraLATA toll call from one party's customer is sent to a number that is, in turn, forwarded through the use of SPNP services to the other party's customer. If so, the terminating party will bill the other party the network access charges for the terminating facilities used for that intraLATA toll traffic.

**N.** If during the term of this Agreement, the Federal Communications Commission issues regulations pursuant to 47 U.S.C. §251 to require number portability different than that provided pursuant to this subsection, the parties agree to fully comply with those regulations.

## **VII. Provision of Unbundled Elements**

**A.** BellSouth will offer an unbundled local loop to US LEC at the current rates as set forth in Attachment C-15, incorporated herein by this reference. Special construction charges, if applicable, will be as set forth in BellSouth's Intrastate Special Access Tariff as said tariff is amended from time to time during the term of this Agreement. BellSouth will also offer, as a new service loop concentration as set forth in Attachment C-16, incorporated herein by this reference. The parties agree that loop concentration service as offered above is not an unbundled element.

**B.** BellSouth will offer to US LEC unbundled loop channelization system service which provides the multiplexing function to convert 96 voice grade loops to DS1 level for connection with US LEC's point of interface. Rates are as set forth in Attachment C-16, incorporated herein by this reference.

**C.** BellSouth will offer to US LEC unbundled local transport from the trunk side of its switch at the rates as set forth in Attachment B-1, incorporated herein by this reference.

**D.** BellSouth will offer to US LEC unbundled local switching at the rates as set forth in Attachment C-17, incorporated herein by this reference, for the unbundled exchange service port.

**E.** BellSouth shall, upon request of US LEC, and to the extent technically feasible, provide to US LEC access to its Network Elements for the provision of an US LEC telecommunications service. Any request by US LEC for access to a BellSouth Network Element that is not already available shall be treated as a Network Element bona fide request. US LEC agrees to pay the costs associated with the bona fide request if US LEC cancels the request or fails to purchase the service once completed. US LEC shall provide BellSouth access to its Network Elements as mutually agreed by the Parties or as required by a state commission or the FCC.

**F.** A Network Element obtained by one Party from the other Party under this section may be used in combination with the facilities of the requesting Party only to provide a telecommunications service, including obtaining billing and collection, transmission, and routing of the telecommunications service.

## **VIII. Access To Poles, Ducts, Conduits, and Rights of Way**

BellSouth agrees to provide to US LEC, pursuant to 47 U.S.C. § 224, as amended by the Act, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth.

## **IX. Access to 911/E911 Emergency Network**

**A.** For basic 911 service, BellSouth will provide to US LEC a list consisting of each municipality in each state that subscribes to Basic 911 service. The list will also provide, if known, the E911 conversion date for each municipality and, for network routing purposes, a ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to 911. US LEC will arrange to accept 911 calls from its end users in municipalities that subscribe to Basic 911 service and translate the 911 call to the appropriate 10-digit directory number as stated on the list provided by BellSouth. US LEC will route that call to BellSouth at the appropriate tandem or end office. When a municipality converts to E911 service, US LEC shall discontinue the Basic 911 procedures and begin the E911 procedures, set forth in subsection (B), below.

**B.** For E911 service, US LEC shall install a minimum of two dedicated trunks originating from US LEC's serving wire center and terminating to the appropriate E911 tandem. The dedicated trunks shall be, at minimum, DS0 level trunks configured either

as a 2 wire analog interface or as part of a digital (1.544 Mb/s) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) pulsing that will deliver automatic number identification (ANI) with the voice portion of the call. If the user interface is digital, MF pulses, as well as other AC signals, shall be encoded per the u-255 Law convention. US LEC will provide BellSouth daily updates to the E911 database.

**C.** If a municipality has converted to E911 service, US LEC will forward 911 calls to the appropriate E911 tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the E911 tandem trunks are not available, US LEC will alternatively route the call to a designated 7-digit local number residing in the appropriate PSAP. This call will be transported over BellSouth's interoffice network and will not carry the ANI of the calling party.

**D.** BellSouth and US LEC agree that the practices and procedures contained in the E911 Local Exchange Carrier Guide For Facility-Based Providers, as it is amended from time to time during the term of this Agreement by BellSouth, shall determine the appropriate procedures and practices of the parties as to the provision of 911/E911 Access.

**E.** The applicable rate elements are as set forth in Attachment C-3, incorporated herein by this reference.

## **X. Provision of Operator Services**

**A.** The parties agree to mutually provide busy line verification and emergency interrupt services pursuant to each party's published Tariffs as the Tariffs are amended from time to time during the term of this Agreement.

**B.** BellSouth will offer to US LEC Operator Call Processing Access Service; and Directory Assistance Access Services (Number Services). Rates, terms and conditions are set forth in Attachment C-8 for Operator Call Processing Access Service and Attachment C-9 for Directory Assistance Access Services. Both Attachments are incorporated herein by this reference.

**C.** BellSouth will offer to US LEC CMDS Hosting and the Non Sent Paid Report System pursuant to the terms and conditions set forth in Attachment C-11, incorporated herein by this reference.

## **XI. Directory Listings**

**A.** Subject to execution of an agreement between US LEC and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation, ("BAPCO"), substantially in the form set forth in Attachment C-1, (1) listings shall be included in appropriate White Pages or alphabetical directories; (2) US LEC's business subscribers' listings shall also

be included in appropriate Yellow Pages, or classified directories; and (3) copies of such directories shall be delivered to US LEC's subscribers.

**B.** BellSouth will include US LEC's subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge US LEC to maintain the Directory Assistance database. The parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format and content of listing information.

**C.** BellSouth will provide US LEC a magnetic tape or computer disk containing the proper format for submitting subscriber listings. US LEC will provide BellSouth with its directory listings and daily updates to those listings, including new, changed, and deleted listings, in an industry-accepted format.

**D.** BellSouth and BAPCO will accord US LEC's directory listing information the same level of confidentiality which BellSouth and BAPCO accords its own directory listing information, and BellSouth shall limit access to US LEC's customer proprietary confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.

**E.** Additional listings and optional listings may be provided by BellSouth at the rates set forth in the General Subscriber Services Tariff as the tariff is amended from time to time during the term of this Agreement.

## **XII. Access to Telephone Numbers**

**A.** BellSouth, during any period under this Agreement in which it serves as a North American Numbering Plan administrator for its territory, shall ensure that US LEC has nondiscriminatory access to telephone numbers for assignment to its telephone exchange service customers. It is mutually agreed that BellSouth shall provide numbering resources pursuant to the BellCore Guidelines Regarding Number Assignment and compliance with those guidelines shall constitute nondiscriminatory access to numbers. US LEC agrees that it will complete the NXX code application in accordance with Industry Carriers Compatibility Forum, Central Office Code Assignment Guidelines, ICCF 93-0729-010. This service will be as set forth in Attachment C-2, incorporated herein by this reference.

**B.** If during the term of this Agreement BellSouth is no longer the North American Numbering Plan administrator, the parties agree to comply with the guidelines, plan or rules adopted pursuant to 47 U.S.C. § 251(e).

## **XIII. Access to Signaling and Signaling Databases**

**A.** Each party will offer to the other party use of its signaling network and signaling databases on an unbundled basis at published tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity.

**B.** BellSouth agrees to input the NXXs assigned to US LEC into the Local Exchange Routing Guide ("LERG").

**C.** BellSouth will enter US LEC line information into its Line Information Database ("LIDB") pursuant to the terms and conditions contained in Attachment C-5, incorporated herein by this reference. Entry of line information into LIDB will enable US LEC's end users to participate or not participate in alternate billing arrangements such as collect or third number billed calls.

**D.** If US LEC utilizes BellSouth's 800 database for query purposes only, the rates and charges shall be as set forth in Attachment C-4, incorporated herein by this reference.

#### **XIV. BellSouth's Offer of Services Available for Resale**

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

**B.** US LEC may resell the tariffed telecommunications services of BellSouth, including any broadband exchange line or SynchroNet® service, subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the following are not available for purchase: Grandfathered services; promotional and trial retail service offerings; lifeline and linkup services; contract service arrangements; installment billing options; 911 and E911 services; interconnection services for mobile service providers; legislatively or administratively mandated specialized discounts (e.g. education institutions discount); and discounted services to meet competitive situations. BellSouth agrees that US LEC may resell the broadband exchange line or SynchroNet service as provided by BellSouth in any technically feasible manner alone or in conjunction with its own service offering.

**C.** The provision of services by BellSouth to US LEC does not constitute a joint undertaking for the furnishing of any service.

**D.** US LEC will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and expect payment from US LEC for all services.

**E.** US LEC will be BellSouth's single point of contact for all services purchased pursuant to this Agreement including all ordering activities and repair calls. For all repair requests, US LEC accepts responsibility for adhering to BellSouth's

prescreening guidelines prior to referring the trouble to BellSouth. BellSouth may bill US LEC for handling troubles that are found not to be in the BellSouth network. The parties agree that BellSouth may contact US LEC's customers, if in its sole discretion it reasonably deems it necessary for maintenance purposes. BellSouth shall have no other contact with the end user except to the extent provided for herein.

**F.** Either party may bill the end user for any services that the end user specifies it wishes to receive directly from either party. Both parties maintain the right to serve directly any end user within the service area of US LEC and agree not to interfere with the right of any end user to obtain service directly from the other party. Both parties will directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of the other party.

**G.** In most circumstances, the current telephone number of an end user may be retained by the end user unless the end user has past due charges associated with the end user's account for which payment arrangements have not been made. Neither party will, however, make the end user's previous telephone number available to the other party until the end user's outstanding balance has been paid.

**H.** BellSouth may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to US LEC for a charge not less than BellSouth's cost.

**I.** The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than BellSouth shall not:

1. Interfere with or impair service over any facilities of BellSouth, its affiliates, or its connecting and concurring carriers involved in its service;
2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

US LEC assumes the responsibility of notifying BellSouth regarding less than standard operations with respect to services provided by US LEC.

**J.** US LEC agrees that its resale of BellSouth services shall be as follows:

1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.

2. To the extent US LEC is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, US LEC shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For purposes of this subsection, to jointly market means any advertisement, marketing effort or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by US LEC are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.
3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to COCOTS customers. Shared Tenant Service customers can only be sold those telecommunications services available in BellSouth's A23 or A27 Shared Tenant Service Tariff, as appropriate.
4. US LEC is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2.3.2.A. of BellSouth's Tariff.
5. Resold services can only be used in the same manner as specified in BellSouth's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23. of BellSouth's Tariff referring to Shared Tenant Service.

**K.** Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

**L.** No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. US LEC is strictly prohibited from

any use, including but not limited to sale, marketing or advertising, of any BellSouth name or trademark.

**M.** Services resold under BellSouth's Tariffs and facilities and equipment provided by BellSouth shall be maintained by BellSouth. US LEC or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth, other than by connection or disconnection to any interface means used, except with the written consent of BellSouth.

**N.** BellSouth will not perform billing and collection services for US LEC as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.

**O.** Until such time as BellSouth receives permission from the FCC to bill the End User Common Line (EUCL) charge to US LEC, BellSouth will, on an interim basis, bill US LEC the charges shown below which are identical to the EUCL rates billed by BellSouth to its end users.

	<b>Monthly Rate</b>
1. Residential	
(a) Each Individual Line or Trunk	<b>\$3.50</b>
2. Single Line Business	
(b) Each Individual Line or Trunk	<b>\$3.50</b>
3. Multi-line Business	
(c) Each Individual Line or Trunk	<b>\$6.00</b>

**P.** The procedures for discontinuing end user service purchased by US LEC for resale to an end user are as follows:

1. Where possible, BellSouth will deny service to US LEC's end user on behalf of, and at the request of, US LEC. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of US LEC
2. At the request of US LEC, BellSouth will disconnect a US LEC end user customer.
3. All requests by US LEC for denial or disconnection of an end user for nonpayment must be in writing.
4. US LEC will be made solely responsible for notifying the end user of the proposed disconnection of the service.

5. BellSouth will continue to process calls made to the Annoyance Call Center and will advise US LEC when it is determined that annoyance calls are originated from one of their end user's locations. BellSouth shall be indemnified, defended and held harmless by US LEC and/or the end user against any claim, loss or damage arising from providing this information to US LEC. It is the responsibility of US LEC to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in BellSouth's disconnecting the end user's service.

**Q.** The procedures for discontinuing service to US LEC are as follows:

1. BellSouth reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by US LEC of the rules and regulations of BellSouth's Tariffs.
2. If payment of account is not received by the bill day in the month after the original bill day, BellSouth may provide written notice to US LEC, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If BellSouth does not refuse additional applications for service on the date specified in the notice, and US LEC's noncompliance continues, nothing contained herein shall preclude BellSouth's right to refuse additional applications for service without further notice.
3. If payment of the account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.
4. If US LEC fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, BellSouth may, on thirty days written notice to the person designated by US LEC to receive notices of noncompliance, discontinue the provision of existing services to US LEC at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice, and US LEC's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to US LEC without further notice.
5. If payment is not received or arrangements made for payment by the date given in the written notification, US LEC's services will be discontinued. Upon

discontinuance of service on a US LEC's account, service to US LEC's end users will be denied. BellSouth will also reestablish service at the request of the end user or US LEC upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures.

6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

**R.** BellSouth may require US LEC to make a deposit, if evidence of good credit cannot be provided, when purchasing services for resale purposes to be held by BellSouth as a guarantee of the payment of rates and charges. Any such deposit may be held during the continuance of the service and may not exceed two month's estimated billing. The fact that a deposit has been made in no way relieves US LEC from the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of BellSouth providing for the discontinuance of service for non-payment of any sums due BellSouth. In the event that US LEC defaults on its account, service to US LEC will be terminated and any deposits held will be applied to its account. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to US LEC during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to US LEC by the accrual date.

**S.** Notwithstanding any other provision of this Article XIV, BellSouth may not assess late payment charges or terminate services which it makes available to US LEC for resale based upon the failure of US LEC to pay amounts owing hereunder when due if such unpaid amounts have not been paid by US LEC on the basis of a bona fide dispute; however, in the event that the dispute is resolved in favor of BellSouth, late payment charges may be assessed from and after the date that such amounts were originally due and owing.

## **XV. Ordering of Services From BellSouth For Resale Purposes**

**A.** The ordering and provision of services purchased from BellSouth for resale purposes by US LEC shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Reseller) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

**B.** When the initial service is ordered by US LEC, BellSouth will establish an accounts receivable master account for US LEC.

**C.** BellSouth shall bill US LEC on a current basis all applicable charges and credits.

**D.** Payment of all charges will be the responsibility of US LEC. US LEC shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by US LEC from US LEC's customer. BellSouth will not become involved in billing disputes that may arise between US LEC and its customer. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.

**E.** BellSouth will render bills each month on established bill days for each of US LEC's accounts.

**F.** BellSouth will bill US LEC in advance charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, on an individual end user account level.

**G.** The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available U.S. funds. Payment is considered to have been made when received by BellSouth.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

**H.** Upon proof of tax exempt certification from US LEC, the total amount billed to US LEC will not include any taxes due from the end user. US LEC will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

**I.** As the customer of record, US LEC will be responsible for, and remit to BellSouth, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

**J.** If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment

penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lessor of:

1. The highest interest rate (in decimal value) which may be levied by law for commercial transaction, compounded daily for the number of days from the payment due date to and including the date that US LEC actually makes the payment to BellSouth, or
2. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that US LEC actually makes the payment to BellSouth.

**K.** Any Carrier Common Line charges (CCL) associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, BellSouth.

**L.** In general, BellSouth will not become involved in disputes between US LEC and US LEC's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of BellSouth, US LEC shall contact the designated Service Center for resolution. BellSouth will make every effort to assist in the resolution of the dispute and will work with US LEC to resolve the matter in as timely a manner as possible. US LEC may be required to submit documentation to substantiate the claim.

**M.** US LEC is responsible for payment of all appropriate charges for completed calls, services, and equipment. If objection in writing is not received by BellSouth within twenty-nine days after the bill is rendered, the account shall be deemed correct and binding upon US LEC.

**N.** Notwithstanding any other provision of this Article XV, BellSouth may not assess late payment charges or terminate services which it makes available to US LEC for resale based upon the failure of US LEC to pay amounts owing hereunder when due if such unpaid amounts have not been paid by US LEC on the basis of a bona fide dispute; however, in the event that the dispute is resolved in favor of BellSouth, late payment charges may be assessed from and after the date that such amounts were originally due and owing.

## **XVI. Network Design and Management**

**A.** The parties agree to work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth agrees to provide public notice of changes in the information necessary for the transmission and routing of services

using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

**B.** The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

**C.** The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls, e.g.. call gapping, to alleviate or prevent network congestion.

**D.** Neither party intends to charge rearrangement, reconfiguration, disconnection, termination or other non-recurring fees that may be associated with the initial reconfiguration of either party's network interconnection arrangement contained in this Agreement . However, the interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, the parties do intend to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk purchased..

**E.** The parties agree to provide LEC-to-LEC Common Channel Signaling (CCS) to one another, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.

**F.** For network expansion, the parties agree to review engineering requirements on a quarterly basis and establish forecasts for trunk utilization. New trunk groups will be implemented as state by engineering requirements for both parties.

**G.** The parties agree to provide each other with the proper call information, i.e. originated call party number and destination call party number, CIC, and OZZ, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. The exchange of information is required to enable each party to bill properly.

## **XVII. Disconnection of Existing End User Service**

**A.** BellSouth will accept requests from US LEC to disconnect the service of an existing BellSouth end user. BellSouth will accept a request directly from an end user for conversion of the end user's service from US LEC to BellSouth or will accept a request from another ALEC or US LEC for conversion of the Service Provider Number Portability service associated with an end user's service from US LEC to the second ALEC or Reseller. BellSouth will notify US LEC that such a request has been

processed. BellSouth will not require end user confirmation prior to disconnecting the end user's service. US LEC must, however, provide proof of authorization upon request.

**B.** If either party determines that an unauthorized change in local service provider has occurred, it will reestablish service with the appropriate local service provider as requested by the end user and will assess the other party an Unauthorized Change Charge of \$19.41 per line or trunk for Residence or Business. The appropriate nonrecurring charges to reestablish the customer's service with the appropriate local service provider will also be assessed because of the unauthorized change. These charges may be adjusted if satisfactory proof of authorization is provided.

**C.** Either party may designate itself as the preferred provider of local exchange service for its own pay telephones.

## **XVIII. Implementation of Agreement**

The parties agree that within 90 days of the execution of this Agreement they will adopt a schedule for the implementation of this Agreement. The schedule shall state with specificity, conversion, reconfiguration, ordering, testing, and full operational time frames. Both parties agree to provide the appropriate staff support to ensure effective implementation, administration of this Agreement and conversion of existing services to the appropriate rates contained in this Agreement. Any changes in billing to US LEC shall be as of the effective date of this Agreement. The implementation schedule shall be attached to this Agreement as an addendum and specifically incorporated herein by this reference.

## **XIX. Auditing Procedures**

**A.** Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties agree to retain records of call detail for a minimum of nine months from which the PLU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit request shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditory paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit. If, as a result of an audit, either party is found to have overstated the PLU by twenty percentage points (20%) or more, that party shall reimburse the auditing party for the cost of the audit.

**B.** For combined interstate and intrastate US LEC traffic terminated by BellSouth over the same facilities, US LEC shall provide a projected Percentage

Interstate Usage (“PIU”) as defined herein to BellSouth. All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in E2.3.14 of BellSouth’s Intrastate Access Services Tariff will apply to US LEC. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be used for application and billing of local interconnection and intrastate toll access charges.

**C.** BellSouth reserves the right to periodically audit services purchased by US LEC for the purposes of resale to confirm that such services are being utilized in conformity with this Agreement. US LEC agrees to make any and all records available to BellSouth or its auditors on a timely basis. BellSouth shall bear the cost of said audit that shall not occur more than once in a calendar year. If the audit determines that the services are being utilized in violation of this Agreement, US LEC shall be notified and billing for the service will be immediately changed to conform with this Agreement. Service charges, back billing and interest may be applied.

**D.** All audits shall be performed in a manner so as not to unreasonably interfere with the business of the party being audited.

## **XX. Liability and Indemnification**

**A.** With respect to any claim or suit by US LEC, an US LEC customer or by any other person or entity, other than for willful misconduct or gross negligence, for damages associated with any of the services provided by BellSouth pursuant to this Agreement or otherwise, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of B. through G. following, BellSouth’s liability shall not exceed an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected.

**B.** With respect to any claim or suit by BellSouth, a BellSouth customer or by any other person or entity, other than for willful misconduct or gross negligence, for damages associated with any of the services provided by US LEC pursuant to this Agreement or otherwise, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of B. through G. following, US LEC's liability shall not exceed an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected.

**C.** Neither party shall be liable for any act or omission of any other telecommunications company not a party to this Agreement providing a portion of a service, nor shall either party hold liable any other telecommunications company providing a portion of a service for any act or omission of itself.

**D.** Neither party is liable for damages to the other party's terminal location, POI or customer’s premises resulting from the furnishing of a service, including but not

limited to the installation and removal of equipment and associated wiring, unless the damage is caused by the party's gross negligence or willful misconduct.

**E.** Each party shall be indemnified, defended and held harmless by the other against any claim, loss or damage arising from a party's use of services provided by the other party under this Agreement, involving: 1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from a party's own communications; 2) Claims for patent infringement arising from acts combining or using the service furnished by the other party in connection with facilities or equipment furnished by the other party or the other party's customer; 3) any claim, loss, or damage claimed by a customer, arising from the party's use of services provided by the other party under this Agreement; or 4) all other claims arising out of an act or omission of the party in the course of using services provided pursuant to this Agreement.

**F.** Neither party assumes liability for the accuracy of the data provided to it by the other party and each party agrees to indemnify and hold harmless the other for any claim, action, cause of action, damage, injury whatsoever, that may result from the accuracy of data provided in conjunction with the provision of any service provided pursuant to this Agreement.

**G.** Neither party guarantees or makes any warranty with respect to its services when used in an explosive atmosphere. Each party shall be indemnified, defended and held harmless by the other from any and all claims by any person relating to the other party or the other party's customer's use of services so provided.

**H.** No license under patents (other than the limited license to use) is granted or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement. Each party will defend the other against claims of patent infringement arising solely from the use by the other party of services offered pursuant to this Agreement and will indemnify the other party for any damages awarded based solely on such claims.

**I.** Both parties' failure to provide or maintain services offered pursuant to this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against either party, acts of God and other circumstances beyond the party's reasonable control.

**J.** This obligations of the Parties contained within this section shall survive the expiration of this Agreement.

## **XXI. More Favorable Provisions**

**A.** In the event an appropriate regulatory agency or judicial body orders or directs BellSouth or US LEC to provide any substantive portion of this Agreement in a way different than that provided for herein, including but not limited to BellSouth's provision of broadband exchange line services, the parties agree to implement said

order so that the parties can incorporate the order on the same day that the order becomes effective. The parties agree that such action shall take place only after all administrative and judicial remedies have been exhausted. The party pursuing any administrative or judicial remedy agrees to apply the regulatory or judicial order retroactively to the date that the order was initially entered and apply simple interest at a rate based on the thirty day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in the Wall Street Journal. The preceding sentence shall survive the expiration of this Agreement.

**B.** In the event BellSouth executes an interconnection, unbundling and resale agreement with any other local exchange carrier, the parties agree that US LEC shall be eligible to supersede this Agreement with the identical rates, terms and conditions contained in the BellSouth agreement with the other local exchange carrier. If US LEC chooses to adopt another agreement in its entirety, the parties agree that the effective day shall be the date the agreement is approved by the Commission. In addition and not by way of limitation of the foregoing, in the event BellSouth executes an interconnection, unbundling and/or resale agreement with any other local exchange carrier that does not include the limitation on compensation set forth in Section IV(C) of this Agreement, or executes such an agreement which includes resale discounts greater than those set forth on Attachment D to this Agreement, then, regardless of whether there are any other terms or conditions in such other agreement which may be different from those set forth in this Agreement, US LEC may, if it elects to do so by written notice to BellSouth, delete Article IV(C) from this Agreement and/or adopt such greater discounts in lieu of those set forth in Attachment D. This right may be exercised at any time or from time to time during the term of this Agreement and, if this option is elected, the deletion of the limitation and/or such larger resale discounts (as the case may be), shall have effect from the date the notice is given.

**C.** In the event BellSouth files and receives approval for a tariff offering to provide any substantive service of this Agreement in a way different than that provided for herein, the parties agree that US LEC shall be eligible for subscription to said service at the rates, terms and conditions contained in the tariff. The parties agree that such eligibility shall be as of the effective date of the tariff.

**D.** The Parties acknowledge that BellSouth will guarantee the provision of universal service as the carrier-of-last-resort throughout its territory in Florida until January 1, 1998 without contribution from US LEC.

## **XXII. Treatment of Proprietary and Confidential Information**

**A.** Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as

“Information”). Both parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

**B.** Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential; 4) is required to be disclosed by judicial or administrative action provided that the party intending to disclose the information pursuant to this Agreement shall have first advised the other party of the proposed disclosure and shall have taken reasonable steps to ensure the confidentiality of the information.

### **XXIII. Resolution of Disputes**

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

### **XXIV. Limitation of Use**

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

### **XXV. Waivers**

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.



Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

US LEC of North  
Carolina, L.L.C.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTACHMENT "C"

APPLICABLE DISCOUNTS

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

		DISCOUNT	
STATE	RESIDENCE		BUSINESS
ALABAMA	10%		10%
FLORIDA	18%		12%
GEORGIA	20.3%*		17.3%*
KENTUCKY	10%		8%
LOUISIANA	11%		10%
MISSISSIPPI	9%		8%
NORTH CAROLINA	12%		9%
SOUTH CAROLINA	10%		9%
TENNESSEE	11%		9%

\*The Georgia discount is subject to change as a result of final resolution of the order of the Georgia Public Service Commission, issued June 12, 1996.

Discounts will not apply to: Unbundled port service; nonrecurring charges; federal or state subscriber line charges; inside wire maintenance plans; pass-through charges (e.g. N11 end user charges); and taxes

**AMENDMENT NO.1  
TO  
INTERCONNECTION AGREEMENT BETWEEN  
US LEC of North Carolina L.L.C. AND  
BELLSOUTH TELECOMMUNICATIONS , INC. November 1, 1996**

This Amendment No. 1 (“Amendment”), is made as of September 23, 1997, to that certain Agreement dated November 12, 1996 between BellSouth Telecommunications, Inc. (“BellSouth”) and US LEC of North Carolina, L.L.C., a North Carolina limited liability company (“US LEC-NC”), (as clarified by various communications, the “Existing Agreement”)

A. The following affiliates of US LEC-NC have been organized for the purpose of becoming certified as ALECs in the following states where BellSouth has ILEC operations:

<u>Affiliate</u>	<u>State</u>
US LEC of Tennessee L.L.C.	Tennessee
US LEC of South Carolina	South Carolina
US LEC of Georgia	Georgia
US LEC of Florida	Florida

B. US LEC-NC and BellSouth desire to extend the Existing Agreement and admit US LEC of Tennessee, a Delaware limited liability company (“US LEC-TN”), US LEC of South Carolina L.L.C., a Delaware limited liability company (“US LEC-SC”), US LEC of Georgia L.L.C., a Delaware limited liability company (“US LEC-GA”), and US LEC of Florida, Inc., a North Carolina corporation (“US LEC-FL”), as parties to the Existing Agreement with the same rights and obligations thereunder as US LEC-NC, except as otherwise provided in this Amendment.

In consideration of the premises and intending to be legally bound hereby, the Parties hereto agree as follows:

1. The Existing Agreement is hereby amended to add each of US LEC-TN, US LEC-SC, US LEC-GA and US LEC-FL to the Existing Agreement as a party thereto and to include each of them within the definition of “Party” and all of them within the definition of “Parties”.

2. From and after the date of this Agreement, the term “US LEC” as used in the Existing Agreement shall refer to US LEC-NC, US LEC-TN, US LEC-SC, US LEC-GA and US LEC-FL, and any of them; it being the intent of the Parties that the Existing Agreement as amended hereby shall be interpreted and construed with respect to all matters related to North Carolina such that the Existing Agreement shall be construed and interpreted as being severally between BellSouth and US LEC-NC, and with respect to all matters related to Tennessee such that the Existing Agreement shall be construed and interpreted as being severally between BellSouth and US LEC-TN, and with respect to all matters related to South Carolina such that the Existing Agreement shall be construed and interpreted as being severally between BellSouth and US LEC-SC, and with respect to all matters related to Georgia such that the Existing Agreement shall be construed and interpreted as being severally between BellSouth and US LEC-GA, and with respect to all matters related to Florida such that the Existing Agreement shall be construed and interpreted as being severally between BellSouth and US LEC-FL.

3. BellSouth further acknowledges and agrees that US LEC-NC, US LEC-TN, US LEC-SC, US LEC-GA and US LEC-FL shall not be jointly liable to BellSouth with respect to the performance of their respective duties and obligations under the Agreement; it being the intent that (a) each of US LEC-NC, US-LEC-TN, US LEC-SC, US LEC-GA and US LEC-FL shall only be severally obligated under the Existing Agreement and severally liable to BellSouth under the affiliates, and (b) US LEC-TN shall have duties and obligations under the Agreement only with respect to Tennessee, US LEC-SC shall have duties and obligations under the Agreement only with respect to South Carolina, US LEC-GA shall have duties and obligations under the Agreement only with respect to Georgia, US LEC-FL shall have duties and obligations under the Agreement only with respect to Florida, US LEC-NC shall have duties and obligations under the Agreement only with respect to Alabama, Kentucky, Louisiana, Mississippi and North Carolina.

4. The term of the Agreement shall not be extended by this Amendment, and the parties confirm that it will terminate with respect to all Parties effective as of November 1, 1998.

5. The 90 day period for adopting an implementation plan shall begin on the date hereof with respect to each of US LEC-TN, US LEC-SC, US LEC-GA, and US LEC-FL or, if later, the date on which the applicable entity has filed its application for certification as an ALEC with the appropriate state commissioner.

6. The address for notices in Article XXVIII of the Existing Agreement US LEC-NC may be used for US LEC-TN, US LEC-SC, US LEC-GA, and US LEC-FL as well as US LEC-NC.

7. Terms beginning with capital letters which are not otherwise defined in this Amendment shall be interpreted and construed with the same definition(s) and meaning(s) as set forth in the Existing Agreement.

8. BellSouth acknowledges that the US LEC-NC, US LEC-TN, US LEC-SC, and US LEC-GA may be reorganized as corporations by merging such entities with corporations organized under Delaware or North Carolina law, and hereby agrees that such mergers shall not effect the Existing Agreement as modified by this Amendment so long as the surviving entities in such mergers shall be controlled by US LEC L.L.C., or its successor by merger. US LEC-NC shall notify BellSouth promptly following each such merger of the name of the successor entity and its state of incorporation.

9. In all other respects, the terms and conditions of the Existing Agreement shall remain in full force and effect.

10. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

11. This Amendment contains the final, complete and exclusive statement of the agreements between the parties relating to the amendment of the Existing Agreement contemplated by this Amendment, and all prior and contemporaneous written or oral agreements relating to the extension of the Existing Agreement to US LEC-TN, US LEC-SC, US LEC-GA and/or US LEC-FL are merged herein and superseded.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment in duplicate originals as of the date first set forth above, and by executing this Amendment each of US LEC -FL, US LEC-GA, US LEC-SC and US LEC-TN agree to be bound by the terms of the Existing Agreement, as amended by this Amendment, effective as of the date hereof.

**BellSouth Telecommunications, Inc.**

By: \_\_\_\_\_  
Printed Name: Jerry D. Hendrix  
Title: Director-Interconnection Services  
Date: September 23, 1997

**US LEC of Florida, Inc.**

By: \_\_\_\_\_  
Printed Name: Gary D. Grefrath  
Title: Executive Vice President,  
Regulatory & Administration  
Date: September 22, 1997

**US LEC of Georgia L.L.C.**

By: \_\_\_\_\_  
Printed Name: Gary D. Grefrath  
Title: Executive Vice President,  
Regulatory & Administration  
Date: September 22, 1997

**US LEC of North Carolina L.L.C.**

By: \_\_\_\_\_  
Printed Name: Gary D. Grefrath  
Title: Executive Vice President,  
Regulatory & Administration

**US LEC of South Carolina L.L.C.**

By: \_\_\_\_\_  
Printed Name: Gary D. Grefrath  
Title: Executive Vice President,  
Regulatory & Administration  
Date: September 22, 1997

**US LEC of Tennessee L.L.C.**

By: \_\_\_\_\_  
Printed Name: Gary D. Grefrath  
Title: Executive Vice President,  
Regulatory & Administration  
Date: September 22, 1997