

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF KENTUCKY

IN THE MATTER OF: )  
)  
INTERCONNECTION AGREEMENT BETWEEN )  
ACC OF KENTUCKY LLC AND DUO COUNTY ) Case No. \_\_\_\_\_  
TELEPHONE COOPERATIVE CORP., INC. )  
PURSUANT TO SECTION 252(b) OF THE )  
COMMUNICATIONS ACT OF 1934, AS AMENDED )  
BY THE TELECOMMUNICATIONS ACT OF 1996. )  
\_\_\_\_\_ )

---

**ACC OF KENTUCKY LLC's  
PETITION FOR ARBITRATION**

---

David M. Wilson  
Leon M. Bloomfield  
Wilson & Bloomfield LLP  
1901 Harrison Street, Suite 1630  
Oakland, CA 94612  
510.625.8250

Holland N. McTyeire, V  
Greenbaum Doll & McDonald LLC  
3300 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202  
502.589.4200

Attorneys for Petitioner  
ACC of Kentucky LLC

July 24, 2001

July 31, 2001

17605-7.11

Bill Magruder  
Duo County Telephone Cooperative  
1021 West Cumberland Avenue  
Jamestown, KY 42629-0080

Re: ACC of Kentucky LLC (Request for Negotiations Pursuant to Sections 251-252  
of the Telecommunications Act of 1996)

Dear Mr. Magruder:

This office represents ACC of Kentucky LLC and various other affiliates of American Cellular Corporation and Dobson Cellular Systems, Inc.

This letter is a request for negotiation of interconnection arrangements pursuant to the provisions of Sections 251-252 of the Communications Act of 1934 as amended in 1996. I would appreciate hearing from you regarding procedures to be followed.

Thanking you in advance for your cooperation, I am

Sincerely,

David M. Wilson

DMW:lmb

cc: Hugh Jeffries  
Ron Ripley  
John Herbst

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF KENTUCKY

IN THE MATTER OF: )  
 )  
INTERCONNECTION AGREEMENT BETWEEN ) Case No. \_\_\_\_\_  
ACC OF KENTUCKY LLC AND DUO COUNTY )  
TELEPHONE COOPERATIVE CORP., INC. )  
PURSUANT TO SECTION 252(b) OF THE )  
COMMUNICATIONS ACT OF 1934, AS AMENDED )  
BY THE TELECOMMUNICATIONS ACT OF 1996. )  
\_\_\_\_\_ )

---

**ACC OF KENTUCKY LLC's  
PETITION FOR ARBITRATION**

---

I. OVERVIEW

1. Pursuant to Section 252(b)(1) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"), ACC of Kentucky LLC, formerly known as Central Kentucky Cellular ("ACC"), hereby petitions this Commission to arbitrate open issues relating to ACC's request for an interconnection agreement with Duo County Telephone Cooperative Corp., Inc. ("Duo County"). Although the parties have reached agreement on system architecture and rates for dedicated transport, there are still numerous issues to be resolved. As discussed more thoroughly below, these open issues include such vital – and well-settled – matters as billing factors, transport and termination compensation rates, ACC's right to symmetrical

compensation, Duo County's recognition of ACC NXX's and Duo County's failure to provide ACC with interim service arrangements. ACC now respectfully seeks the Commission's assistance in arbitrating these open issues.

## II. PARTIES

2. ACC is a Kentucky limited liability company which under, Federal Communications Commission ("FCC") licenses, provides commercial mobile radio services ("CMRS" or "cellular") to the public in the following Kentucky counties: Adair, Anderson, Barren, Bath, Boyle, Bracken, Casey, Clinton, Cumberland, Fleming, Garrard, Green, Hardin, Hart, LaRue, Laurel, Lewis, Lincoln, Madison, Marion, Mason, McCreary, Menifee, Mercer, Monroe, Montgomery, Nelson, Nicholas, Robertson, Rockcastle, Rowan, Russell, Spencer, Taylor, Washington, Wayne. ACC has its main business office and its mobile telephone switching office ("MTSO") at 124 South Keeneland Drive in Richmond, Kentucky.

3. Communications in this matter should be addressed to ACC's counsel, who are:

David M. Wilson  
Leon M. Bloomfield  
Wilson & Bloomfield LLP  
1901 Harrison Street, Suite 1630  
Oakland, CA 94612  
510.625.8250

Holland N. McTyeire, V  
Greenbaum Doll & McDonald PLLC  
3300 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202  
502.589.4200

4. Duo County is an incumbent local exchange carrier ("ILEC") certificated by this Commission to provide telephone exchange services in the following Kentucky counties:

Adair, Casey, Cumberland, Monroe, Russell and Wayne

### III. FACTUAL BACKGROUND

5. On February 15, 2001 ACC sent Duo County a written request for negotiations under 47 U.S.C. Section 251-52 which, among other things, required Duo County to negotiate in good faith with ACC the terms and conditions on which calls might be exchanged between them. See 47 U.S.C. § 251(c)(1). A copy of the February 15, 2001 request is attached hereto as Exhibit A.

6. Traffic between the parties - of which over 95% is “local” as defined by 47 C.F.R. Section 51.701(b)(2) - is now being transited through Bell South (and/or delivered through an IXC) with Duo County billing Bell South for access charges, and Bell South in turn billing ACC for reimbursement of such charges.<sup>1</sup>

7. Following its receipt of ACC’s letter of February 15, 2001, Duo County and ACC entered into negotiations. These negotiations have included telephone conferences and the exchange of numerous emails, correspondence and draft agreements. After preliminary agreement on system architecture (see Paragraph no. 13 , below), Duo County forwarded a draft interconnection agreement for ACC’s review. A copy of that draft agreement is attached hereto as Exhibit B. The draft agreement contained provisions which, contrary to the Act would:

- Impose Transport and Termination charges which include subsidy elements and are otherwise not based on forward-looking costs studies (Ex. B, Appendix B);
- Provide for asymmetrical termination rates so that Duo County would be entitled to compensation for terminating local traffic originated by ACC at a rate 173% greater than the rate ACC would be entitled to for terminating local traffic originated by Duo County (see Ex. B, Appendix B);

---

<sup>1</sup> To the extent Duo County uses an IXC to deliver local traffic to ACC, Duo County’s end-users are likely being subjected to additional charges for local calls.

- Allow Duo County to deliver local traffic through an interexchange carrier (and/or other third-party carrier) and thus avoid its obligations to provide reciprocal compensation to ACC (see Ex. B, Paragraph 4.2.2.3);
- Allow Duo County to disregard the rate centers assigned by ACC to its NXXs in order to treat local traffic directed to ACC numbers as toll or long distance calls (see Ex. B, Paragraphs 1.23 and 4.2.2.4);
- Limit Duo County's obligations to pay for local traffic terminated by ACC to those calls made by Duo County customers on measured-rated plans - of which there are none (see Exhibit B, Paragraph 5.1.1);
- Impose billing/traffic factors, with no factual support, which establish a mobile to land default factor of 80:20 with 50% of those mobile to land calls deemed interMTA and thus subject to Duo County's access charges which are considerably higher than its termination compensation rates (see Ex. B, Appendix A and Paragraphs 1.15, 5.4 and 5.5).

8. ACC responded to Duo County's proposed agreement in the course of telephone conferences and reduced those objections to writing in a letter dated May 15, 2001.<sup>2</sup> A copy of that letter is attached hereto as Exhibit E. Among other things, ACC's noted that the Duo County was obligated to pay ACC for "all local calls originated by Duo County and terminated by ACC" regardless of the rate plans Duo County provided to its customers and that Duo County could "not evade the reciprocal compensation obligations of the Act by delivering local calls to an IXC for termination" (see Ex. E, Paragraphs 6 and 8). Moreover, ACC noted that: (a) Duo County was not entitled to disregard the rate centers assigned by ACC to its NXXs (so that Duo County would in essence be able to treat all local traffic originated on its system and directed to ACC as toll traffic); (b) the billing/traffic factors should be based on the results of ACC's study based on actual data from its Richmond MTSO; and (c) the Act requires that termination compensation rates for

---

<sup>2</sup> On May 10, 2001, ACC sent a formal written request to Duo County for interim interconnection arrangements pursuant to 47 C.F.R. Section 51.715. A copy of that request is attached hereto as Exhibit C. Duo County has still not provided any such arrangements and instead has attempted to impose conditions on any such service such as making any arrangements applicable only to mobile to land local traffic. See Letter dated June 19, 2001 from Duo County attached hereto as Exhibit D and discussion in Paragraph no. 21, *infra*.

interconnection be symmetrical and based on forward-looking cost studies neither of which were evident in the Duo County draft agreement (see Ex. E, Paragraphs 7, 9 and 11).

9. By letter dated May 22, 2001, Duo County responded in writing to ACC's May 15<sup>th</sup> letter. In that letter, Duo County confirmed that it "has not conducted any specific study of cost with respect to transport and termination". Instead, Duo County identified that its costs were based on the components of transport and termination "(i.e., end office switching, tandem switching and transport) that Duo County provides in the context of interstate access services." A copy of that letter is attached hereto as Exhibit F. Duo County further responded in a letter dated May 23, 2001, a copy of which is attached hereto as Exhibit G.

10. On May 31, 2001, Duo County sent ACC a settlement proposal, including a revised draft agreement, which addressed ACC's substantive concerns with the exceptions of symmetry, transport and termination rates, and Duo County's "right" to terminate the routing and rating arrangement at any time. However, Duo County conditioned its proposal as an all or nothing offer ("[i]n the absence of acceptance of this proposal as a whole, Duo County is not offering to alter its position on any of the individual issues.") The Settlement Proposal was marked "Confidential and Proprietary" and thus is not attached as an Exhibit to this Petition.

11. By letter dated June 7, 2001, ACC made a counterproposal to Duo County in which it expressed its willingness to abide by the substantive revisions made by Duo County and suggested a way to address the issues of symmetry and transport and termination rates. The ACC counterproposal also contained a provision to address Duo County's desire to reserve a right to terminate certain rating and routing arrangements prior to expiration of the proposed agreement. Duo County has made no response to the June 7 letter.

12. For purposes of this petition for arbitration, ACC will identify the resolved and open issues based on the original draft interconnection agreement provided by Duo County. However, ACC notes that it continues to be willing to abide by the terms outlined in the Duo County revised agreement dated May 31, 2001 with the exceptions referred to above in Paragraphs 10-11. To the extent that Duo County is willing to abide by those terms as well, the arbitration could be greatly simplified. An Interconnection Negotiation Matrix summarizing the resolved and unresolved issues is attached hereto as Exhibit H for the Commission's reference.

#### IV. ISSUES RESOLVED BY THE PARTIES

13. System Architecture: Under the Act and FCC regulations, each party is obligated to transport its calls to the network of the other. This means that absent an agreement to the contrary, Duo County should transport calls originated by Duo County to the MTSO in Richmond, Kentucky, while ACC must transport mobile-originated calls to the Duo County tandem office located at Russell Springs, Kentucky. In order to economize on transport costs and to meet certain other Duo County concerns, ACC offered to pay all costs associated with transporting intercarrier traffic between the Richmond MTSO and an ACC cell-site installation at Russell Springs which is located within Duo County's local service area. A dedicated facility would be installed between the Russell Springs cell site and Duo County's Russell Springs tandem, a distance which ACC believes to be less than five miles. The cost of the new facility would be apportioned between the parties based on the percentages of interconnected traffic originated by each party. Through this facility, ACC would deliver mobile-originated calls directed to Duo County numbers residing at Russell Springs or at the end offices subtending the Russell Springs tandem (i.e., Burkesville, Fairplay, Columbia, and Jamestown). Similarly, Duo County would have



the means directly to deliver traffic originated by its customers and addressed to ACC telephone numbers (“NXXs”) that are rated to points within the Lexington/Louisville MTA.

14. Rates for Dedicated Transport: Duo County has proposed and ACC has agreed to pay Duo County’s tariffed special access rate for dedicated transport, which is \$443 (non-recurring) and \$353.44 (recurring monthly charge). As noted above, such costs would be subject to apportionment. See 47 C.F.R. § 51.709 (where dedicated facilities are used to carry calls in both directions, the costs must be apportioned between the carriers to reflect the percentage of calls originated by each carrier and carried on the facility).

#### V. UNRESOLVED (“OPEN”) ISSUES

15. Transport and Termination Compensation Rates: Duo County seeks termination compensation from ACC of 2.7155 cents (\$.027155) per minute for terminating calls originated by ACC. As noted above, this rate is derived from Duo County’s interstate access charges and includes subsidy elements such as a “transport interconnection charge”. (See Exhibit F.) However, the FCC has been clear that when either party originates a call that is terminated by the other, the originating party must pay the terminating party its forward-looking, “additional costs” of transporting and terminating the call. Moreover, Duo County has the burden of proving its “additional costs”, which may not include subsidy elements. See 47 C.F.R. § 51.705; see also In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996 et al., CC Dkt. Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (rel. August 8, 1996) (“First R&O”) at ¶ 718 et seq. (access charges are not an appropriate measure for termination compensation, “transport interconnect charges” (known as “TICs” or “RICs”) are not to be included in ILEC termination charges for local calls). ACC has asked Duo County to

provide cost justification for its proposed rate that is consistent with the FCC's "forward-looking" cost rules. Duo County has declined to do so.

16. Symmetricality: ACC has asked to be compensated for transporting and terminating land-originated calls at the same rate that Duo County bills ACC for transporting and terminating mobile-originated calls. Instead, Duo County insists that ACC receive .9956 cents (\$.009956) per minute for terminating calls originated by Duo County while it receives 2.7155 cents (\$.027155) per minute for terminating calls originated by ACC (i.e., a rate which is 237% greater). As this Commission and the Act make clear, Duo County has no basis for refusing to provide symmetrical termination compensation rates. See e.g., In re The Petition of Level 3 Communications, LLC, for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, KY PSC Case No. 2000-404 (Order, March 14, 2001) ("... the Commission concludes that 47 C.F.R. Section 51.711(a) of the FCC's rules requires symmetrical compensation ..."); 47 C.F.R. § 51.711(a) ("[r]ates for transport and termination of local telecommunications traffic shall be symmetrical") and In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) at ¶ 105 (a CMRS carrier such as ACC, when it serves an equivalent or greater geographic area than that served by the ILEC, is entitled to be compensated in the same way and at symmetrical rates when it transports and terminates calls originated by the ILEC).

17. Delivery of Traffic Through Third Party Carriers/IXCs. Duo County insists that it has the right to deliver local traffic originated by its customers to ACC through third-party carriers including interexchange carriers (see Ex. B, Paragraph 4.2.2.3). In essence, this would allow Duo County to transform local traffic (as defined by 47 C.F.R. § 51.701(b)(2)) to non-local

traffic. See e.g., First R&O, R1036 (“...traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under Section 251(b)(5), rather than interstate and intrastate access charges.”) (emphasis added). At a minimum, this device allows Duo County to avoid its obligation to pay ACC reciprocal compensation for that traffic by routing such traffic through a third-party carrier to which either the calling party or ACC must pay additional charges. ACC contends that under the Act Duo County may not refuse to deliver local land-to-mobile calls directly to ACC once ACC has sought interconnection under the Act. Duo County’s position to the contrary essentially undermines the entire purpose behind the Act, which is to open up the market for competition on a “just, reasonable and nondiscriminatory” basis.<sup>3</sup> See 47 U.S.C. § 251(2). ACC notes that it is willing, and was willing to abide, by Duo County’s suggested compromise on this issue except for Duo County’s insistence that it may withdraw from the compromise at any time during the term of the agreement. See Paragraph 11 above.

18. Recognition of NXXs: Consistent with industry practice, ACC has reserved blocks of telephone numbers, or NXXs, and has rated them to the Duo County service area. ACC understands and believes that competing cellular carriers have done the same, and that Duo County allows its customers to call competitor’s numbers without any additional charges. As to ACC, however, Duo County has taken the position that it may disregard ACC’s rating of its NXX codes and, alternatively, charge its customers toll rates for calls addressed to ACC NXXs, and/or that it may deliver such calls through third-party carriers. The result is that Duo County customers

---

<sup>3</sup> This provision, as well as Duo County’s attempts to disregard the designation of NXXs and otherwise limit its obligations to pay termination compensation only on calls from measured-rated customers – of which it has none – also denies Duo County’s customers the benefits of competition in that it ultimately requires them to pay for toll charges for local calls.

would be charged toll rates for calls addressed to ACC customers although similar calls addressed to Duo County customers (or other competing cellular carriers) with telephone numbers rated to the same rate centers could be made at no additional charge. Neither common sense or the Act allows Duo County rate calls to ACC numbers in a way which is materially different from how it treats numbers allocated to itself or to competing cellular carriers. Cf. In re the Petition of Level 3 Communication, supra, (foreign exchange services of the ILEC and virtual NXX services of the CLC should be considered local traffic when the customer is physically located with the same LATA).<sup>4</sup> If carriers were allowed to simply disregard another carrier's NXX designations, the LERG (and all the associated routing guidelines) would be in disarray and interconnection obligations under the Act would be rendered meaningless. ACC notes that it is willing, and was willing to abide, by Duo County's suggested compromise on this issue except for Duo County's insistence that it could alter its position on recognition of the NXXs at any time.

19. No Termination Compensation for Flat-Rated Customers. Duo County asserts that it has no obligation to pay for local traffic originated by its customers except for those calls originated by Duo County customers on measured-rate plans. (see Ex. B, Paragraph 5.1.1). As an initial matter, ACC believes that Duo County has no such measured-rate customers. Moreover, there is simply no basis in the Act or elsewhere which would support such a limitation – each party is obligated to pay for transport and termination of local calls regardless of whether the service is flat-rated. See First R&O at ¶ 1041 (“LEC’s reciprocal compensation obligations under

---

<sup>4</sup> The fact that all local traffic originated by Duo County will be delivered to ACC's cell site that is within Duo County's service area should eliminate any assertion by Duo County that it somehow has to bear additional costs because ACC cellular customers are, by definition, mobile. Although the Act requires Duo County to deliver such traffic to ACC's MTSO in Richmond, ACC has offered to relieve Duo County of that responsibility in this case. Moreover, the interMTA factors customary in CMRS/ILEC agreements should address any issue regarding customers who are not in the local area.

Section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.”) (emphasis added); see also 47 U.S.C. § 252(d)(2)(A)(i) (interconnection agreements must “provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier...”). ACC notes that it was and is willing, to abide by the suggested compromise on this issue contained in Duo County’s May 31<sup>st</sup> proposal, subject to resolution of the other issues described herein.

20. Billing/Traffic Factors: Duo County has proposed billing/traffic factors as follows:

|                |                      |
|----------------|----------------------|
| Mobile to Land | 80%                  |
|                | - 50% local          |
|                | - 25% Interstate MTA |
|                | - 25% Intrastate MTA |
| Land to Mobile | 20%                  |
|                | - 80% local          |
|                | - 10% paging         |
|                | - 5% Intrastate MTA  |
|                | - 5 % Interstate MTA |

See Ex B, Appendix A. However, Duo County has been unable (or unwilling) to provide any documentary or other evidence to support these factors. As noted above, ACC has conducted a study of all of the traffic handled by its Richmond MTSO (which serves RSA 4, 5, 6 and 8, all of which are in Kentucky). Moreover, of the 38 counties from which ACC originates calls, all but 3 are in MTA 26, i.e., the MTA which contains all of Duo County’s service area. The results of that study, which ACC believes are equally applicable to the traffic between ACC and Duo County, are as follows:

|                |                             |
|----------------|-----------------------------|
| Mobile to Land | -72%                        |
| Land to Mobile | -28%                        |
|                | -1.03% Intrastate MTA( est) |
|                | -2.5% Interstate MTA        |
|                | -0% Paging                  |

As noted above, the billing/traffic factor will be used to apportion the costs (both non-recurring and recurring) of the dedicated link between the Russell Springs cell site and the Russell Springs tandem, and may also be used to assist both parties in billing for termination compensation. (The inter-MTA factor will be used to determine the number of calls which would be deemed subject to access charge compensation in favor of Duo County rather than to the reciprocal compensation requirements outlined above for local traffic.) Please note that ACC was willing, and remains willing, to accept the compromise billing/traffic factors proposed by Duo County in its May 31<sup>st</sup> offer subject to resolution of the other issues described herein.

21. Interim Service Request: As of May 10, 2001, ACC requested interim interconnection arrangements with Duo County pursuant to 47 C.F.R. Section 51.715. (See Ex. E.) ACC simply contends that it is entitled to reciprocal traffic exchange under the provisions of the Act, and that any charge levied by Duo County must be consistent with the default rates established by 47 C.F.R. Section 51.715(b)(3). Despite the mandatory language of the Regulations, and their clear intent to prevent parties from using the negotiation/arbitration process to delay the implementation of interconnection, Duo County has not yet provided such arrangements for ACC. Instead, Duo County has indicated that while it will comply with the request insofar as it asks for direct delivery of mobile-to-land calls, it will not comply for purposes of delivering land-to-mobile calls. This means that land-to-mobile calls would continue to be

delivered through third-party carriers, with access charges being imposed on ACC and/or toll charges being imposed on Duo County customers who call ACC end users. In addition, Duo County has stated that its interim charges to ACC for terminating mobile-to-land calls will be based on its interstate access charge rates, and that these rates will not be subject to true up as required by Section 51.715(d) of the FCC's Regulations.<sup>5</sup> (See Ex. F.) ACC contends that Duo County may not impose additional requirements on the provision of interim interconnection arrangements other than those explicitly provided for in the Regulations.

## VI. PRAYER FOR RELIEF

WHEREFORE, ACC respectfully requests that the Commission:

- Initiate an arbitration proceeding to resolve the open issues described above pursuant to the provisions of Sections 251-252 of the Act;
- Issue an Order requiring Duo County to comply with the terms and conditions set forth by ACC as noted above;

///

///

///

///

///

///

///

---

<sup>5</sup> Duo County contends it is not obligated to provide the rates outlined in Section 51.715(b)(3) because the default rates set by the FCC in 47 C.F.R. Section 51.707 have been vacated by the Eighth Circuit. See Iowa Utilities Bd. v. FCC (8<sup>th</sup> Cir. 2000) 219 F. 3d 744. ACC respectfully disagrees with that contention given that the Eighth Circuit explicitly exempted Section 51.715(d) as it applied to CMRS carriers. Moreover, in the interests of obtaining interim service arrangements without further delay, ACC does not insist on the default rates in 51.715(b)(3) provided all such interim charges are subject to adjustment and true-up consistent with the outcome of this arbitration proceeding. See 47 C.F.R. § 51.715(d).

- Issue an order requiring Duo County to immediately provide direct interconnection for all local traffic between the parties at symmetrical rates which are subject to true up and adjustment under § 51.715(d); and
- Grant such further relief as the Commission deems appropriate.

Respectfully submitted this \_\_\_\_\_ day of July, 2001.

David M. Wilson  
Leon M. Bloomfield  
Wilson & Bloomfield LLP  
1901 Harrison Street, Suite 1630  
Oakland, CA 94612  
510.625.8250

Holland N. McTyeire, V  
Greenbaum Doll & McDonald PLLC  
3300 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202  
502.589.4200

By: \_\_\_\_\_

Attorneys for Petitioner ACC of Kentucky



CERTIFICATE OF SERVICE

Pursuant to Section 252(b)(3) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, I hereby certify that on the 24<sup>th</sup> day of July, 2001, a copy of this petition was sent to the following parties via UPS:

William Magruder  
General Manager  
Duo County Telephone  
1021 West Cumberland Avenue  
Jamestown, KY 42629-0080

and

Steve Watkins  
Principal, Management Consulting  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037

By: \_\_\_\_\_  
Attorneys for Petitioner  
ACC of Kentucky

**DRAFT**

**AGREEMENT**

**FOR**

**FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF  
LOCAL SERVICE AREA TRAFFIC**

**CMRS LEC AGREEMENT**

Effective as of \_\_\_\_\_

**Between**

**ACC OF KENTUCKY, LLC**

hereinafter "ACC of Kentucky"

**and**

**DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.**

## Table of Contents

Introduction

Recitals

- 1.0 Definitions
- 2.0 Interpretation and Construction
- 3.0 Scope
- 4.0 Service Agreement
  - 4.1 Methods of Interconnection
  - 4.2 Service Types
  - 4.3 Signaling
- 5.0 Compensation Arrangements
  - 5.1 CMRS-LEC Local Service Area Traffic
  - 5.2 Rate Structure
  - 5.3 Non-Recurring Charges
  - 5.4 Inter-MTA Traffic
  - 5.5 Traffic Distribution
- 6.0 Notice of Changes
- 7.0 General Responsibilities of the Parties
- 8.0 Effective Date, Term and Termination
- 9.0 Cancellation Charges
- 10.0 Indemnification
- 11.0 Limitation of Liability
- 12.0 Compliance with Laws and Regulations
- 13.0 Disclaimer of Representation and Warranties
- 14.0 Miscellaneous
  - 14.1 Authorization
  - 14.2 Disclaimer of Agency: No Third Party Beneficiaries; Independent Contractor
  - 14.3 Force Majeure
  - 14.4 Treatment of Proprietary and Confidential Information
  - 14.5 Choice of Law
  - 14.6 Taxes
  - 14.7 Assignability
  - 14.8 Billing and Payment; Disputed Amounts
  - 14.9 Dispute Resolutions
  - 14.10 Notices
  - 14.11 Joint Work Product
  - 14.12 No License
  - 14.13 Survival
  - 14.14 Entire Agreement
  - 14.15 Non-Waiver
  - 14.16 Publicity and Use of Trademarks or Service Marks
  - 14.17 Severability
  - 14.18 Counterparts
  - 14.19 Modification, Amendment, Supplement or Waiver

**DRAFT**

**AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF LOCAL SERVICE AREA TRAFFIC  
(CMRS-LEC AGREEMENT)**

**Introduction**

**DRAFT**

Pursuant to this CMRS-LEC Agreement for Facilities-Based Network Interconnection for Transport and Termination of Local Service Area Traffic, Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky will extend certain network arrangements to one another as specified below.

**Recitals**

WHEREAS, ACC of Kentucky is a Commercial Mobile Radio Services ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide CMRS; and

WHEREAS, Duo County Telephone Cooperative Corp., Inc. is a Local Exchange Carrier ("LEC") providing telecommunications services in the Commonwealth of Kentucky; and

WHEREAS, the Parties desire to interconnect their respective CMRS and LEC network facilities for the purpose of delivery of specific traffic for transport and termination on the other Party's network; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations and the terms and conditions under which they will interconnect their networks and provide other services as set forth 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, Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky hereby agrees as follows:

**1.0 Definitions**

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Communications Act of 1934, as amended. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" is As Defined in the Act.

1.3 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

a. "End Office Switches" which are used to terminate lines from individual stations for the purpose of interconnection to each other and to trunks; and

b. "Tandem Office Switches" which are used to connect and switch trunk

circuits between and among other Central Office Switches. A Central Office Switch may be employed as a combination End Office/Tandem Office Switch.

- 1.4 "Commercial Mobile Radio Service" or "CMRS" means Commercial Mobile Radio Service as defined in Part 20 of the FCC's Rules.
- 1.5 "Commission" means the Kentucky Public Service Commission.
- 1.6 "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis, and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be Signaling System Seven ("SS7").
- 1.7 "DS1" is a digital signal rate of 1,544 Mbps (mega bits per second).
- 1.8 "DS3" is a digital signal rate of 44.736 Mbps.
- 1.9 "FCC" means the Federal Communications Commission.
- 1.10 "Information Service" is as defined in the Communications Act of 1934, as amended.
- 1.11 "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider, that provides information services.
- 1.12 "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.
- 1.13 "Interconnection" for purposes of this Agreement is the linking of the ACC of Kentucky and Duo County Telephone Cooperative networks for the delivery of traffic.
- 1.14 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 1.15 "Inter-MTA Traffic" is: (a) traffic originated by a CMRS end user of ACC of Kentucky in one MTA and terminated to an end user of Duo County Telephone Cooperative in another MTA; and (b) traffic originated by an end user of Duo County Telephone Cooperative in one MTA and terminated to an end user of ACC of Kentucky in another MTA. Inter-MTA traffic is subject to Duo County Telephone Cooperative's originating and terminating Switched Exchange Access Service charges.
- 1.16 "Local Service Area Traffic" is defined for the purposes of CMRS-LEC interconnection under this Agreement and for the purpose of compensation under this Agreement as traffic which is originated by an end user of one Party and terminates to an end user of the other Party within the same Major Trading Area ("MTA"), provided that the end user of ACC of Kentucky is a

DRAFT

two-way CMRS customer and the traffic is delivered by either Party over the connecting facilities covered by this Agreement. The term Local Service Area Traffic is applied pursuant to this Agreement solely for the purpose of defining the scope of traffic delivered by one Party to the other Party that is subject to specific CMRS-LEC interconnection compensation terms. The use of the term Local Service Area Traffic for purposes of specific CMRS-LEC interconnection arrangements has no effect on the definition of local traffic or the geographic area associated with local calling under either Party's respective end user service offerings.

DRAFT

- 1.17 "Local Exchange Carrier" or "LEC" is as defined in the Act.
- 1.18 "Major Trading Area" or "MTA" means Major Trading Area as used by the FCC in licensing CMRS.
- 1.19 "Multifrequency" means a signaling system for use between switching systems which uses a method of sending pulses over a circuit by using one pair of tones from a total set of five tones to encode each digit.
- 1.20 "NXX" means a three-digit code valid within an area code which appears as the first three digits of a seven-digit telephone number with the exception of the special 500, 600, 700, 800 and 900 codes and other similar special codes which may come into common usage in the future.
- 1.21 "Party" means either Duo County Telephone Cooperative Corp., Inc. or ACC of Kentucky, and "Parties" means Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky.
- 1.22 "Point of Connection" or "POC" is a mutually agreed upon point of demarcation between networks where the delivery of traffic from one Party to the other Party takes place.
- 1.23 "Rate Center" means the specific geographic point ("Vertical and Horizontal" ["V & H"] coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V & H coordinate, which is used to measure distance-sensitive end user traffic to/from, the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area. The use by a CMRS provider of a Rate Center V & H for mobile CMRS services has no specific geographic meaning.
- 1.24 "Telecommunications" is as defined in the Act.
- 1.25 "Telecommunications Act" or "Act" means the Telecommunications Act of 1996.
- 1.26 "Telecommunications Carrier" is as defined in the Act.

DRAFT

## 2.0 Interpretation and Construction

- 2.1 All references to Sections, Exhibits, Appendices and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of references only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including ACC of Kentucky's, Duo County Telephone Cooperative's or other third party offerings, guides or practices), statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).
- 2.2 The Parties acknowledge that some of the services, facilities or arrangements described herein reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail. This Agreement supersedes any prior agreements between the Parties.

## 3.0 Scope

- 3.1 This Agreement sets forth the terms, conditions and prices under which the Parties agree to interconnect the CMRS network of ACC of Kentucky and the LEC network of Duo County Telephone Cooperative for the purposes of delivering certain traffic for transport and/or termination on the other Party's network including:
- 3.1.1 CMRS to LEC Local Service Area Traffic that is: (a) originated on the CMRS network of ACC of Kentucky; (b) delivered to the Duo County Telephone Cooperative network over the connecting facilities pursuant to this Agreement; and (c) terminated on the incumbent LEC network of Duo County Telephone Cooperative;
- 3.1.2 CMRS to LEC Inter-MTA that is: (a) originated on the CMRS network of ACC of Kentucky; (b) delivered to the Duo County Telephone Cooperative network over the connecting facilities pursuant to this Agreement; and (c) terminated on the incumbent LEC network of Duo County Telephone Cooperative;
- 3.1.3 LEC to CMRS Local Service Area Traffic that is: (a) originated on the incumbent LEC network of Duo County Telephone Cooperative; (b) delivered to ACC of Kentucky over the connecting facilities pursuant to this Agreement; and (c) terminated on the CMRS network of ACC of Kentucky;

3.1.4 IntraMTA Traffic that is: (a) originated on the incumbent network of Duo County Telephone Cooperative; (b) delivered to ACC of Kentucky over the connecting facilities pursuant to this Agreement; and (c) terminated to a CMRS customer of ACC of Kentucky.

DRAFT

- 3.2 This Agreement also provides for specific compensation between the Parties for the transport and termination of Local Service Area Traffic on each Party's network as set forth in this Agreement. The specific provisions applicable to compensation for the transport and termination of Local Service Area Traffic do not apply to any other types of traffic or in any other geographic area.
- 3.3 Local Service Area Traffic does not include inter-MTA traffic discussed in Section 5.4 or traffic that either Party originates to, or terminates from, an interexchange carrier providing either intraLATA or interLATA toll services, regardless of the originating and terminating end points to a call. All traffic that Duo County Telephone Cooperative originates to, or terminates from, an IXC will be subject to access charges to be retained by Duo County Telephone Cooperative.
- 3.4 This Agreement only applies with respect to the traffic delivered over the connecting network arrangement(s) between the Parties.
- 3.5 This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement does not obligate either Party to deliver traffic to the other Party pursuant to the terms of this Agreement. This Agreement has no effect on the definition of end user services that either Party offers to its end user customers, the services either Party chooses to offer to its respective end user customers, and rate levels or rate structures that either Party charges its end users for services or the manner in which either Party provisions or routes the services either Party provides to its respective end user customers.
- 3.6 Compensation for the transport and termination of Local Service Area Traffic applies only to traffic associated with the provision of local exchange carrier services by Duo County Telephone Cooperative and to traffic associated with the provision of two-way CMRS by ACC of Kentucky. Traffic associated with fixed wireless services of ACC of Kentucky is specifically excluded from this Agreement. Traffic associated with any service that ACC of Kentucky may provide to ISPs is excluded from this Agreement. This Agreement does not apply to traffic originated, terminated or carried by or on third party networks or to any other traffic not specifically identified in this Section 3.0.
- 3.7. Connecting facilities established pursuant to this Agreement shall not be used by either Party to deliver any traffic not specifically allowed under this Agreement.



## 4.0 Service Agreement

4.1 Methods of Interconnection - The Parties agree to interconnect their respective networks within the incumbent LEC service area of Duo County Telephone Cooperative at one or more Points of Connection as established by Duo County Telephone Cooperative. Interconnection will be provided through an appropriate Duo County Telephone Cooperative tandem switching office. The POC(s) will be set forth in Appendix A. Duo County Telephone Cooperative shall make available to ACC of Kentucky at the POC(s), trunks over which ACC of Kentucky can terminate traffic described in Section 3.1 and Appendix A. ACC of Kentucky shall make available to Duo County Telephone Cooperative at the POC(s) trunks over which Duo County Telephone Cooperative can terminate traffic described in Section 3.1 and Appendix A. By mutual agreement, the Parties may interconnect on a bi-directional basis using two-way trunk groups between the Parties' networks. All interconnecting facilities will be at a DS1 level, multiple DS1 level or DS3 level and will conform to industry standards. This Agreement does not apply to, and interconnection pursuant to this Agreement cannot be used for, traffic originated, terminated or carried by or on third party networks. All methods of interconnection are subject to the compensation structure set forth in Section 5.0 and Appendix B.

4.2 Service Types - This Agreement provides for the following interconnection arrangements between the Parties for the purpose of delivery by one Party of specific traffic for transport and termination on the other Party's network. The Parties will interconnect their respective networks based upon a Type 2A Service Interconnection ("Type 2A").

4.2.1 Type 2A - Type 2A involves trunk side connections to appropriate Duo County Telephone Cooperative tandem switching offices. Under a Type 2A arrangement, the interconnection facility acts like an interoffice trunk. Type 2A can by mutual agreement be used as a two-way service for originating and terminating traffic between the Parties' respective networks. This Agreement does not apply to, and Type 2A cannot be used for, traffic originated, terminated or carried by or on third party networks.

4.2.1.1 For traffic terminating on Duo County Telephone Cooperative, Type 2A interconnection may be used by ACC of Kentucky to access valid NXX codes associated with Duo County Telephone Cooperative end offices that subtend the specific tandem office to which the Type 2A interconnection is made.

4.2.2.2 Based on the specific Duo County Telephone Cooperative local service area of the originating end user, the Type 2A interconnection may be used by Duo County Telephone Cooperative to deliver traffic to designated NPA-NXXs of ACC of Kentucky for which the associated rate center (as determined by Vertical and Horizontal ["V&H"] coordinates) is within the geographic service area of Duo County Telephone Cooperative and within the specific Duo County Telephone Cooperative local service area of the originating end user. Duo County Telephone Cooperative's local service areas are as set forth in Duo County Telephone Cooperative's intrastate local

service tariff. Duo County Telephone may deliver traffic from specific NXXs to designated NPA-NXXs of ACC of Kentucky for which the associated rate centers are in different local service areas. The compensation rates shall consider Duo County Telephone's transport and these allowable calling arrangements will be designated in Appendix C. All allowable calling and called NPA-NXXs are set forth in Appendix C and can be amended only with the written agreement of both Parties.

4.2.2.3 The Parties agree that the delivery of traffic pursuant to Subsections 4.2.2.1 and 4.2.2.2 is at the option of the respective originating Party. The voluntary delivery of traffic pursuant to Subsections 4.2.2.1 and 4.2.2.2 does not create legal or regulatory obligations for either Party that do not otherwise apply.

4.2.2.4 ACC of Kentucky agrees that the use in Subsections 4.2.2.1 and 4.2.2.2 of rate center V&H coordinates associated with NPA-NXX network numbers assigned by ACC of Kentucky to its mobile CMRS customers is an arbitrary practice applied only for purposes of this Agreement. The designation of rate center V&H coordinates by ACC of Kentucky for NPA-NXX numbers assigned to ACC of Kentucky's mobile CMRS customers does not affect or determine the services offered by Duo County Telephone Cooperative or ACC of Kentucky, the services provided to end users by either Party, the rate structure applied to services provided to end users by either Party or the rates charged to end users by either Party for the services either Party provides. The voluntary use by the Parties of these practices based on the arbitrary designation of rate center V&H coordinates for the NPA-NXX numbers assigned by ACC of Kentucky to its mobile CMRS customers does not create legal or regulatory obligations for either Party that do not otherwise apply. This arbitrary practice is subject to change or termination by Duo County Telephone Cooperative at any time.

4.3. Signaling - SS7 connectivity may be provided by mutual consent. SS7 connectivity will be provided in accordance with prevailing industry standards. The Parties agree to cooperate on the exchange of all appropriate SS7 messages for local call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate full interoperability of all CLASS features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon. All SS7 signaling parameters will be provided in conjunction with traffic trunk groups, where and as available. These parameters include, but are not limited to, Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, calling party category information, charge number, etc. All parameters related to network signaling information will also be provided, such as ACC of Kentucky Information Parameter ("CIP"), wherever such information is needed for call routing and billing. Each Party

will honor Privacy Indicators as required under applicable law. ACC of Kentucky must interconnect, directly or indirectly, with the Duo County Telephone Cooperative Signal Transfer Points ("STPs") serving the Local Service Area in which Local Service Area Traffic and inter-MTA traffic will be exchange. Duo County Telephone Cooperative may use a third party's STP and SCP facilities. ACC of Kentucky may choose a third-party SS7 signaling provider to transport signaling messages to and from Duo County Telephone Cooperative's SS7 network. In that event, ACC of Kentucky's third-party provider must present a letter of agency to Duo County Telephone Cooperative authorizing the third party to act on behalf of ACC of Kentucky. The third-party provider for ACC of Kentucky must interconnect with the Duo County Telephone Cooperative STP(s) serving the geographic area in which the traffic exchange trunk groups are located. ACC of Kentucky will be responsible for all costs associated with establishing SS7 connectivity between Duo County Telephone Cooperative and ACC of Kentucky. Where SS7 signaling is not available, in-band signaling shall be used in accordance with accepted industry standards.

## 5.0 Compensation Arrangements

DRAFT

5.1 CMRS-LEC Local Service Area Traffic - Subject to the provisions of Section 5.1.1, each Party shall pay the other Party for transporting and terminating Local Service Area Traffic that either Party delivers to the other Party's network pursuant to the provisions of this Agreement. These charges and rates do not apply to any other types of traffic or for traffic delivered in any other areas other than those set forth in this Agreement and described in Appendix A. The Parties agree that Duo County Telephone Cooperative will not provide any compensation to ACC of Kentucky for traffic associated with one-way CMRS, including paging services, provided by ACC of Kentucky or for traffic terminating to an ISP.

5.1.1 The Parties agree that Duo County Telephone Cooperative will not provide any compensation to ACC of Kentucky for traffic that Duo County Telephone Cooperative delivers over the connecting facilities pursuant to this Agreement to be terminated on the network of ACC of Kentucky for which Duo County Telephone Cooperative has chosen not to charge the originating end user a per-minute fee. If Duo County Telephone Cooperative begins to apply a specific per-minute charge to originating users for calling described in the preceding sentence, then the rates in Appendix B will apply.

5.2 Rate Structure - A POC(s) will be established between the Parties' facilities-based networks as specified in Appendix A for the delivery of Local Service Area traffic described in Section 3.1. ACC of Kentucky must obtain special access from Duo County Telephone Cooperative subject to the rates, terms and conditions contained in Duo County Telephone Cooperative's intrastate access tariff for the purpose of the connection between the POC and Duo County Telephone Cooperative's applicable end office or tandem office. These connecting facilities are set forth in Appendix A. Duo County Telephone Cooperative will charge special access from the applicable Duo County Telephone Cooperative intrastate access tariff for the tandem connecting facilities. Special access charges for the connecting facilities will be reduced to reflect the proportionate share of the facilities that are used for

transport traffic originated by Duo County Telephone Cooperative as specified in Appendix A. For any specific POC, the Parties agree to charge a single, combined, per-minute rate, as specified in Appendix B, which encompasses total compensation for transport, call termination and any other facilities utilized to terminate Local Service Area traffic on the other Party's respective networks.

5.3 Non-Recurring Charges - ACC of Kentucky agrees to the non-recurring fees as set forth in Appendix B for any additions to, or added capacity for, special access connecting facilities.

5.4 Inter-MTA Traffic - The specific compensation arrangements set forth in this Agreement for Local Service Area Traffic are not applicable to Inter-MTA Traffic described in Section 3.1.2 and Section 3.1.6. ACC of Kentucky will provide compensation to Duo County Telephone Cooperative for originating and terminating Inter-MTA Traffic according to the terms and conditions of Duo County Telephone Cooperative's applicable federal and state access tariffs.

5.4.1 ACC of Kentucky and Duo County Telephone Cooperative will develop mutually acceptable percent usage factors for the relative amounts of Inter-MTA traffic and Local Service Area traffic delivered by ACC of Kentucky over the connecting facilities pursuant to this Agreement as defined in Section 3.1.2 and Section 3.1.7. The Parties will work together to develop an auditable report which shows, for traffic that is delivered by ACC of Kentucky to Duo County Telephone Cooperative over the connecting facilities pursuant to this Agreement, the ratio of Inter-MTA traffic to Local Service Area traffic for representative periods of time. The Parties agree to the original PIU to be utilized as established in Appendix A.

5.4.2 The Parties recognize the Inter-MTA Traffic (defined in Section 3.1.2 and Section 3.1.4) is both Interstate and Intrastate in nature. For the Inter-MTA Traffic delivered over the connecting facilities by either Party, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix A. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of Inter-MTA Traffic that is interstate in nature; intrastate access charges will apply to the percentage of Inter-MTA Traffic that is intrastate in nature.

5.4.3 The designation of traffic as either Local Service Area Traffic (for which transport and termination charges apply) or Inter-MTA Traffic (for which access charges apply) for purposes of compensation pursuant to this Agreement shall be based on the actual originating and terminating points of the complete end-to-end call; provided, however, that for ACC of Kentucky the location of the cell site serving the CMRS end user when the call begins shall be used as the determinant of the geographic location of the mobile customer.

5.5 Traffic Distribution - The relative directionality and distribution of traffic with respect to the connecting facilities is set forth in Appendix A. The Parties

agree to the default percentages set forth in Appendix A for the application of charges pursuant to this Agreement. The default percentages will be used for a minimum of 12 months. If both Parties measure traffic and agree to new traffic percentages based on a prior 12-month period, the percentages specified in Appendix A will be amended and applied to prospective periods. Each Party agrees to provide available traffic data or permit the other Party's recording equipment to be installed for sampling purposes in conjunction with any subsequent traffic measurement. The Parties agree that under no condition will Duo County Telephone Cooperative's percentage of originating traffic exceed 50% for compensation purposes.

## **6.0 Notice of Changes**

If a Party makes a change in its network which it believes will materially affect the interoperability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

## **7.0 General Responsibilities of the Parties**

- 7.1 The Parties shall jointly develop a schedule for promptly implementing all requirements of this Agreement ("Implementation Schedule"). Both Duo County Telephone Cooperative and ACC of Kentucky shall use commercially reasonable efforts to comply with the Implementation Schedule.
- 7.2 The Parties shall exchange technical descriptions and forecasts of their originating traffic in sufficient detail necessary to establish the interconnections required to assure traffic termination.
- 7.3 Thirty (30) days after the Effective Date of each quarter during the term of this Agreement, ACC of Kentucky shall provide Duo County Telephone Cooperative with a rolling six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services provided under this Agreement and in the form and such detail as agreed by the Parties. The Parties agree that each forecast provided under this Section shall be deemed "Proprietary Information".
- 7.4 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring and billing traffic from the other Party's network and for delivering of such traffic it receives in that mutually acceptable format and to terminate the traffic it receives in that mutually acceptable format to the proper address on its network. Such facility shall be designed based upon the description provided under Section 4.0 above. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 7.5 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may

discontinue or refuse service if the other Party violates this provision.

- 7.6 The characteristics and methods of operation of any circuits, facilities or equipment of one Party connected with the services, facilities or equipment of the other Party shall not interfere with or impair service over any facilities of the other Party, its affiliated companies or its connecting and concurring carriers involved in its services; or cause damage to the other Party's plant, impair the privacy of any communications carried over the facilities or create hazards to the employees of the other Party, its affiliated companies or its connecting and concurring carriers or the public.
- 7.7 If such characteristics or methods of operation are not in accordance with the preceding paragraph, either Party will notify the other Party that temporary discontinuance of the circuit, facility or equipment may be required; however, when prior notice is not practicable, either Party may forthwith temporarily discontinue the use of a circuit, facility or equipment if such action is reasonable under the circumstances. In such case of temporary discontinuance, either Party will promptly notify the other Party and provide the other Party with the opportunity to correct the condition which gave rise to the temporary discontinuance. No allowance for interruption will be applicable.
- 7.8 Each Party is solely responsible for the services it provides to its customers and to other telecommunications carriers.
- 7.9 Each Party is responsible for administering NXX codes assigned to it.
- 7.10 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g., workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage of bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).
- 7.11 The physical connection of facilities, delivery of traffic and/or termination of traffic may be temporarily discontinued by either Party upon thirty (30) days' written notice to the other Party for repeated or willful violation of or refusal to comply with any of the provisions of this Agreement.

## **8.0 Effective Date, Term and Termination**

- 8.1 This Agreement shall become effective thirty (30) days following State Commission approval of this Agreement. When the Agreement becomes effective, the provisions contained in Section 2.0 of this Agreement shall apply with respect to the interpretation and construction of this Agreement and its ongoing relation to other references, including subsequent tariffs.
- 8.2 The initial term of this Agreement shall be two (2) years from the effective date and shall then automatically renew on a year-to-year basis. Upon expiration of the initial term, either Party may terminate this Agreement by providing written notice of termination to the other Party, with such written

notice to be provided at least sixty (60) days in advance of the date of termination.

8.3 Upon termination or expiration of this Agreement in accordance with this Section:

- (a) each Party shall comply immediately with its obligations set forth above;
- (b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;
- (c) each Party's indemnification obligations shall survive termination or expiration of this Agreement.

8.4 The arrangements pursuant to this Agreement including the provision of services or facilities shall immediately terminate upon the suspension, revocation or termination by other means of either Party's authority to provide services. For Duo County Telephone Cooperative, authority involves the provision of local exchange or exchange access services. For ACC of Kentucky, authority involves the provision of CMRS services under license from the Federal Communications Commission.

8.5 The services and facilities arrangements pursuant to this Agreement may be terminated by either Party upon not less than ten (10) days notice to the other Party for failure to pay undisputed amounts on the dates or times specified for the facilities and services furnished pursuant to this Agreement.

8.6 Either Party may terminate this Agreement 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 thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

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

**9.0 Cancellation Charges**

Except as provided herein, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.

**10.0 Indemnification**

10.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by any other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term

of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 6.0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

10.2 The indemnification provided herein shall be conditioned upon:

- DRAFT**
- a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
  - b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
  - c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not unreasonably withheld.
  - d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
  - e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

10.3 In addition to its indemnity obligations under Section 10.1 and 10.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 11.2, below).

## **11.0 Limitation of Liability**

11.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 11. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions, interruptions, delays, errors or defects occurring in the course of furnishing any services, arrangements or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal



to the pro monthly charge for the period in wh such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions interruptions, delays, errors or defects.

- 11.2 Neither Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 10.
- 11.3 The Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties shall assert the applicability of any limitation on liability to customers that may be contained in either Party's applicable tariff(s) or customer contracts.

## 12.0 Compliance with Laws and Regulations

- 12.1 Each Party shall comply with all federal, state and local statutes, regulations, rules, ordinances, judicial decisions and administrative rulings applicable to its performances under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations hereunder.
- 12.2 The Parties understand and agree that this Agreement will be filed with the Commission. The Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects this Agreement, both Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the Agreement. Furthermore, this Agreement is subject to change, modification or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction. Notwithstanding these mutual commitments, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related specifically to this Agreement or other types of arrangements prescribed in this Agreement

## 13.0 Disclaimer of Representation and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR

CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE

## 14.0 Miscellaneous

### 14.1 Authorization

14.1.1 Duo County Telephone Cooperative is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

14.1.2 ACC of Kentucky is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

### 14.2 Disclaimer of Agency: No Third Party Beneficiaries. Independent Contractor

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

14.3 Force Majeure - Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions fire, explosion, power failure, acts of God, war, revolution, civil commotion or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affected Party shall,

upon giving prompt notice to the other Party be excused from such performance on a day-to-day basis to the extent of such interferences (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

#### 14.4 Treatment of Proprietary and Confidential Information

14.4.1 Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including, but not limited to, trade secrets, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary information shall remain the property of the disclosing Party. Both Parties agree that all Proprietary Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Proprietary Information will be returned to the owner within a reasonable time. Both Parties agree that the Proprietary Information shall be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Proprietary Information. Both Parties agree to protect the Proprietary Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Proprietary Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Proprietary Information received as they would use to protect their own confidential and proprietary information.

DRAFT

14.4.2 Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Proprietary Information that is either: 1) by a non-party to the Agreement; 2) lawfully obtained from any source other than the owner of the Proprietary Information; 3) publicly known through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

14.5 Choice of Law - The construction, interpretation, enforcement and performance of this Agreement shall be in accordance with the laws of the State of Kentucky without regard to its conflict of laws and principles.

## 14.6 Taxes

14.6.1 It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply:

### 14.6.2 Definitions

14.6.2.1 For purposes of this Subsection 11.6, the terms "taxes" and "fees" shall include but not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights-of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments thereof, excluding any taxes levied on income.

14.6.2.2 The term "Providing Party" shall mean the Party whose rates apply to the transaction. The term "Purchasing Party" shall be the Party responsible for payment of compensation under this Agreement with respect to a transaction. The term "Selling Party" shall have the same meaning as Providing Party.

### 14.6.3 Taxes and Fees Imposed Directly on Either Seller or Purchaser

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

14.6.3.2 Taxes and fees imposed on the Purchasing Party, which are not required to be collected and/or remitted by the Providing Party, shall be borne and paid by the Purchasing Party.

### 14.6.4 Taxes and Fees Imposed on Purchaser but Collected and Remitted by Seller

14.6.4.1 Taxes and fees imposed on the Purchasing

Party shall be born / the Purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the Providing Party

14.6.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party remains liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.4.3 If the Purchasing Party determines that in its opinion any such taxes or fees are not payable, the Providing Party shall not bill such taxes or fees to the Purchasing Party if the Purchasing Party provides written certification, reasonably satisfactory to the Providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the Purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the Providing Party, the Purchasing Party may contest the same in good faith, at its own expense. In any such contest, the Purchasing Party shall promptly furnish the Providing Party with copies of all filings in any proceeding, protest or legal challenge, all rulings issued in connection therewith, and all correspondence between the Purchasing Party and the taxing authority.

DRAFT

14.6.4.4 In the event that all or any portion of any amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.6.4.5 If it is ultimately determined that any additional amount of such tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.6.4.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and

against any such tax, fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.

14.6.4.7 Each Party shall notify the other Party in writing of any assessment proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim

14.6.5 Taxes and Fees Imposed on Seller But Passed On to Purchaser

14.6.5.1 Taxes and fees imposed on the Providing Party, which are permitted or required to be passed on by the Providing Party to its customers, shall be borne by the Purchasing Party.

14.6.5.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.5.3 If the Purchasing Party disagrees with the Providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the Providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the Purchasing Party shall abide by such determination and pay such taxes or fees to the Providing Party. The Providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees, provided, however, that any such contest undertaken at the request of the Purchasing Party shall be at the Purchasing Party's expense.

- 14.6.5.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of such tax or fee, or to avoid the existence of a lien on the assets of the Providing Party during the pendency of such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 14.6.5.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 14.6.5.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect, indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.
- 14.6.5.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 14.6.6 **Mutual Cooperation** - In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may be reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.
- 14.7 **Assignability** - Either Party may, with the other Party's prior written consent, assign this including, without limitation, its parent or other affiliate; such consent shall not be unreasonably withheld upon the provision of reasonable evidence by the proposed assignee that it has the resources, ability and authority to provide satisfactory performance under this Agreement. Any assignment or delegation in violation of this Subsection 14.7 shall be void and ineffective and constitute a default of this Agreement. This Agreement shall be binding on and inure to the benefit of the Parties and their respective

legal successors and permitted assignee.

#### 14.8 Billing and Payment; Disputed Amounts

- 14.8.1 Bills are due and payable upon receipt but become delinquent thirty (30) days following the bill date. Although it is the intent of both Parties to submit timely and accurate statements or charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely fashion.
- 14.8.2 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party.
- 14.8.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.
- 14.8.4 If the Parties are unable to resolve issues related to the Disputed Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to Subsection 13.8.4, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.
- 14.8.5 The Parties agree that all negotiations pursuant to this Subsection 14.8 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.



14.8.6 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate of interest that may be charged under applicable law.

14.9 Dispute Resolution - Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action at the Kentucky Public Service Commission or a Kentucky judicial forum or upon mutual agreement, an acceptable arbitration process may be utilized.

14.10 Notices - Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service or requested to the following addresses of the Parties:

ATTN: President  
ACC of Kentucky, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DRAFT**  
ATTN: Executive Vice President  
Duo County Telephone Coop. Corp., Inc  
2150 North Main Street  
P. O. Box 80  
Jamestown, KY 42629

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery or (iii) three (3) days after mailing in the case of first class or certified U.S. mail.

14.11 Joint Work Product - The Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

14.12 No License

14.12.1 Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

14.12.2 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 Party or its customers 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 of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

14.12.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

14.13 Survival - The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

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

14.15 Non-Waiver - Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

14.16 Publicity and Use of Trademarks or Service Marks - Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

14.17 Severability - 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 opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the

Parties shall negotiate in good faith for replacement language that does not materially alter the economic effect of this Agreement on either Party. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

14.18 Counterparts - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

14.19 Modification, Amendment, Supplement or Waiver - No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided or to require performance of any of provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

ACC of Kentucky, LLC

Duo County Telephone Coop. Corp., Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: William W. Magruder

Title: \_\_\_\_\_

Title: Executive Vice President

**DESIGNATION OF POINT(S) OF CONNECTION  
AND TRAFFIC DISTRIBUTION  
CMRS-LEC AGREEMENT**

This Exhibit specifies the Points of Connection ("POCs") pursuant to the Agreement for Facilities-Based Network Interconnection for Transport and Termination of Local Service Area Traffic (CMRS-LEC Agreement) between ACC of Kentucky and Duo County Telephone Cooperative Corp., Inc., and the relative directionality and distribution of traffic with respect to the connecting facilities associated with each POC as follows:

**DRAFT**

**Type 2A Interconnection**

**POC #1** - For the exchange of LEC-CMRS two-way traffic between the Parties' networks within {MTA 263} pursuant to this Agreement, the Parties agree to connect twenty four (24) trunks using one (1) DS1 facility by means of cable at a junction point located at V and H coordinates: V - 6695; H - 2540.

The Parties agree that all traffic originating from and ACC of Kentucky traffic terminating to Duo County Telephone Cooperative's network delivered over these Type 2A trunks shall be measured by Duo County Telephone, and the Parties will apply the following default percentages of traffic distribution for purposes of applying charges pursuant to this Agreement:

**Distribution of Two-Way Traffic:**

- % CMRS-to-LEC traffic terminating on Duo County Telephone Cooperative's network ..... 80%
- % LEC-to-CMRS traffic terminating on ACC of Kentucky's network ..... 20%

**For the 80% of total traffic terminating on Duo County Telephone Cooperative's network, the Parties agree to the following distribution of traffic:**

- % Local Service Area Traffic subject to transport and termination charges ..... 50%
- % Intrastate Inter MTA Traffic ..... 25%
- % Interstate Inter-MTA Traffic ..... 25%

**For the twenty percent (20%) of total traffic terminating on ACC of Kentucky's network the parties agree to the following distribution of traffic:**

- % Local Service Area Traffic subject to transport and termination charges ..... 80%
- % One-Way CMRS Paging Traffic ..... 10%
- % Intrastate Inter-MTA Traffic ..... 5%
- % Interstate Inter-MTA Traffic ..... 5%

Initials/Date \_\_\_\_\_  
ACC of Kentucky, LLC

Initials/Date \_\_\_\_\_  
Duo County Telephone

DESIGNATION OF POINT(S) OF CONNECTION  
AND TRAFFIC DISTRIBUTION  
CMRS-LEC AGREEMENT

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**DRAFT**

ACC of Kentucky, LLC

Duo County Telephone Coop. Corp., Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: William W. Magruder

Title: \_\_\_\_\_

Title: Executive Vice President

**SCHEDULE OF CHARGES PURSUANT TO THE AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION FOR TRANSPORT AND TERMINATION OF LOCAL SERVICE AREA TRAFFIC CMRS LEC AGREEMENT**

This Exhibit specifies the rates for the transport and termination of traffic delivered by one Party to the network of the other Party pursuant to the Agreement for Facilities-Based Network Interconnection for Transport and Termination of Local Service Area Traffic (CMRS-LEC Agreement) between ACC of Kentucky and Duo County Telephone Cooperative Corp., Inc., as follows:

**DRAFT**

**Charges for Transport, Termination and Tandem Switching (for Local Service Area Traffic):**

Local Service Area Traffic originated by ACC of Kentucky and delivered to Duo County Telephone Cooperative over Type 2A trunks at POC # 1: rate per terminating minute of use for all end offices of Duo County Telephone through its Russell Springs tandem switch ..... \$0.027155/MOU

Local Service Area Traffic subject to transport and termination charges originated by Duo County Telephone Cooperative and delivered to ACC of Kentucky over Type 2A trunks at POC #1 (Subject to provisions of Section 5.1.1) ..... \$0.009956/MOU

**Charges for Transport, Termination and Tandem Switching (for Inter-MTA Traffic):**

Current Duo County Telephone Cooperative's access tariffs in the proper jurisdiction apply.

**Special Access Connecting Facilities:**

Duo County Telephone Cooperative will charge ACC of Kentucky special access monthly recurring rates pursuant to Duo County Telephone Cooperative's effective intrastate access tariff for the connecting facilities set forth in Appendix A.

Duo County Telephone Cooperative will charge ACC of Kentucky special access non-recurring rates pursuant to Duo County Telephone Cooperative's effective intrastate access tariff for any new connecting facilities set forth in Appendix A.

Duo County Telephone will credit ACC of Kentucky 20% of the charges specified in this section for its portion of special access transport. Should the parties mutually agree to revise the % traffic flow calculation, the % special access credit will be modified to reflect the revised traffic flow %, but under no circumstances will the credit exceed 50%.

Initials/Date \_\_\_\_\_  
ACC of Kentucky, LLC

Initials/Date \_\_\_\_\_  
Duo County Telephone

SCHEDULE OF ALLOWABLE NXX CALLING SCOPE FOR  
TRAFFIC EXCHANGE AT POC #1  
CMRS-LEC AGREEMENT

| <u>Duo County Telephone Exchange - NXX</u> |         | <u>ACC of Kentucky - NXX<br/>and Associated Local Service Area</u> |      |
|--|---------|--|------|
| Russell Springs                            | 866/858 | Russell Springs  | ???? |
| Jamestown                                  | 343     | Russell Springs  | ???? |
| Fairplay                                   | 378     | Fairplay   | 250  |
| Burkesville Rural                          | 433     | Burkesville Rural  | 406  |

DRAFT

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

ACC of Kentucky, LLC

Duo County Telephone Coop. Corp., Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: William W. Magruder

Title: \_\_\_\_\_

Title: Executive Vice President

July 31, 2001

17605-7.11

VIA TELECOPIER & U.S. MAIL

William W. Magruder  
General Manager  
Duo County Telephone  
1021 West Cumberland Avenue  
Jamestown, KY 42629-0080

Re: Request for Interim Arrangements - 47 CFR Section 51.715

Dear Mr. Magruder:

Pursuant to our conversation earlier today, attached please find a copy of John Herbst's request for Type 2 interconnection with Duo Telephone. This request was faxed to Darrel Hammond at Duo Telephone on April 20, 2001, yet Dobson is still awaiting an order confirmation. In addition, Mr. Herbst's requests (both verbal and via email) for information about Duo Telephone's switch have gone unanswered. (This information is needed in order for Dobson to make the appropriate arrangements with its SS7 provider.) Moreover, it is our understanding that these requests have been refused on the ground that there is not now an interconnection agreement between the two carriers and Duo Telephone does not want to waste its time.

However, as you are obviously aware, Dobson has made a formal demand for interconnection under Sections 251-52 of the Act and Mr. Herbst's request for interim arrangements post dates that demand. Thus, under the provisions of Section 51.715(a) of the FCC's regulations (see also First Report and Order, && 1065 et seq.), Duo Telephone is obligated to provide transport and termination of [Dobson's] local telecommunications traffic immediately under an interim arrangement, subject to true-up following negotiation or arbitration of the outstanding issues between the parties. Duo Telephone representatives should feel free to directly contact John Herbst at (859) 544-4820 to discuss the fulfillment of this order.

Your anticipated cooperation with this matter is appreciated.

Sincerely,

Leon M. Bloomfield

LMB:lmb  
Enclosure

cc: Steve Watkins (w/ enc.)  
Hugh Jeffries (w/ enc.)  
John Herbst (w/ enc.)



William W. Magruder  
July 31, 2001  
Page 2

bc: Ron Ripley (w/ enc.)

KRASKIN, LESSE & COSSON, LLP  
ATTORNEYS AT LAW  
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

2120 L Street, N.W., Suite 520  
Washington, D.C. 20037

Telephone (202) 296-8890  
Telecopier (202) 296-8893

By Facsimile and U.S. Mail

June 19, 2001

RECEIVED

JUN 21 2001

Mr. David Wilson  
Wilson & Bloomfield, LLP  
1901 Harrison Street, Suite 1630  
Oakland, California 94612

Re: Interim Transport and Termination Arrangement between ACC of  
Kentucky, LLC, and Duo County Telephone Cooperative Corp., Inc.

Dear Mr. Wilson:

As discussed, Duo County Telephone Cooperative ("Duo County") requests acknowledgment and confirmation from ACC of Kentucky, LLC ("ACC") regarding the terms and conditions under which Duo County will provide interim transport and termination services to ACC:

1. Pursuant to a request by ACC under Section 51.715 of the Federal Communications Commission ("FCC") Rules, Duo County will provide interim Transport and Termination to ACC. Transport and Termination are network functions as defined by Sections 51.701(c) and (d) of the FCC's Rules. The terms of this interim Transport and Termination arrangement will be referred to as the "Interim Agreement."
2. The Interim Agreement applies exclusively to traffic originated on ACC's network and delivered by ACC over the facilities connecting the ACC Cell Site within the Russell Springs exchange to the Russell Springs tandem switching office of Duo County. ACC will deliver only intra-MTA traffic to Duo County over the interconnection facilities for Termination on the network of Duo County. As requested by ACC, the traffic delivered by ACC for Transport and Termination will be limited to traffic destined for Termination in the Duo County exchanges of Russell Springs, Jamestown, Fairplay, and Burkesville. ACC represents and warrants that it will not deliver any traffic other than that set forth in this paragraph. Duo County does not seek transport and termination services from ACC, and Duo County will not deliver any traffic over the facilities pursuant to the Interim Agreement. Accordingly, all of the traffic subject to the terms of the Interim Agreement will be mobile-to-land.
3. Duo County will terminate, to its end users, traffic that ACC delivers over the facilities at a Transport and Termination rate of \$0.027155 per terminating minute of use. Duo County will

EXHIBIT   D

**AGREEMENT**

**FOR**

**FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF  
LOCAL SERVICE AREA TRAFFIC**

**CMRS-LEC AGREEMENT.**

Effective as of \_\_\_\_\_

**Between**

**ACC OF KENTUCKY, LLC**

**hereinafter "ACC of Kentucky"**

**and**

**DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.**

**Version 061901**

## Table of Contents

Introduction

Recitals

- 1.0 Definitions
- 2.0 Interpretation and Construction
- 3.0 Scope
- 4.0 Service Agreement
  - 4.1 Methods of Interconnection
  - 4.2 Service Types
  - 4.3 Signaling
- 5.0 Compensation Arrangements
  - 5.1 CMRS-LEC Local Service Area Traffic
  - 5.2 Rate Structure
  - 5.3 Non-Recurring Charges
  - 5.4 Inter-MTA Traffic
  - 5.5 Traffic Distribution
- 6.0 Notice of Changes
- 7.0 General Responsibilities of the Parties
- 8.0 Effective Date, Term and Termination
- 9.0 Cancellation Charges
- 10.0 Indemnification
- 11.0 Limitation of Liability
- 12.0 Compliance with Laws and Regulations
- 13.0 Disclaimer of Representation and Warranties
- 14.0 Miscellaneous
  - 14.1 Authorization
  - 14.2 Disclaimer of Agency; No Third Party Beneficiaries; Independent Contractor
  - 14.3 Force Majeure
  - 14.4 Treatment of Proprietary and Confidential Information
  - 14.5 Choice of Law
  - 14.6 Taxes
  - 14.7 Assignability
  - 14.8 Billing and Payment; Disputed Amounts
  - 14.9 Dispute Resolutions
  - 14.10 Notices
  - 14.11 Joint Work Product
  - 14.12 No License
  - 14.13 Survival
  - 14.14 Entire Agreement
  - 14.15 Non-Waiver
  - 14.16 Publicity and Use of Trademarks or Service Marks
  - 14.17 Severability
  - 14.18 Counterparts
  - 14.19 Modification, Amendment, Supplement or Waiver

**AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF LOCAL SERVICE AREA TRAFFIC  
(CMRS-LEC AGREEMENT)**

**Introduction**

Pursuant to this CMRS-LEC Agreement for Facilities-Based Network Interconnection for Transport and Termination of Local Service Area Traffic, Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky will extend certain network arrangements to one another as specified below.

**Recitals**

WHEREAS, ACC of Kentucky is a Commercial Mobile Radio Services ("CMRS") provider licensed by the Federal Communications Commission (FCC) to provide CMRS; and

WHEREAS, Duo County Telephone Cooperative Corp., Inc. is a Local Exchange Carrier ("LEC") providing telecommunications services in the Commonwealth of Kentucky; and

WHEREAS, the Parties desire to interconnect their respective CMRS and LEC network facilities for the purpose of delivery of specific traffic for transport and termination on the other Party's network; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations and the terms and conditions under which they will interconnect their networks and provide other services as set forth 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, Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky hereby agrees as follows:

**1.0 Definitions**

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Communications Act of 1934, as amended. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" is As Defined in the Act.

1.3 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate lines from individual stations for the purpose of interconnection to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. A Central Office Switch may be employed as a combination End Office/Tandem Office Switch.

1.4 "Commercial Mobile Radio Service" or "CMRS" means Commercial Mobile Radio Service as defined in Part 20 of the FCC's Rules.

1.5 "Commission" means the Kentucky Public Service Commission.

1.6 "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis, and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be Signaling System Seven ("SS7").

1.7 "DS1" is a digital signal rate of 1,544 Mbps (mega bits per second).

1.8 "DS3" is a digital signal rate of 44.736 Mbps.

1.9 "FCC" means the Federal Communications Commission.

1.10 "Information Service" is as defined in the Communications Act of 1934, as amended.

1.11 "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider, that provides information services.

1.12 "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.

1.13 "Interconnection" for purposes of this Agreement is the linking of the ACC of Kentucky and Duo County Telephone Cooperative networks for the delivery of traffic.

1.14 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, InterLATA or intraLATA Telephone Toll Services.

1.15 "Inter-MTA Traffic" is: (a) traffic originated by a CMRS end user of ACC of Kentucky in one MTA and terminated to an end user of Duo County Telephone Cooperative in another MTA; and (b) traffic originated by an end user of Duo County Telephone Cooperative in one MTA and terminated to an end user of ACC of Kentucky in another MTA. Inter-MTA traffic is subject to Duo County Telephone Cooperative's originating and terminating Switched Exchange Access Service charges.

1.16 "Local Service Area Traffic" is defined for the purposes of CMRS-LEC interconnection under this Agreement and for the purpose of compensation under this Agreement as traffic which is originated by an end user of one Party and terminates to an end user of the other Party within the same Major Trading Area ("MTA"), provided that the end user of ACC of Kentucky is a two-way CMRS customer and the traffic is delivered by either Party over the connecting facilities covered by this Agreement. The term Local Service Area Traffic is applied pursuant to this Agreement solely for the purpose of defining the scope of traffic delivered by one Party to the other Party that is subject to specific CMRS-LEC interconnection compensation terms. The use of the term Local Service Area Traffic for purposes of specific CMRS-LEC interconnection arrangements has no effect on the definition of local traffic or the geographic area associated with local calling under either Party's respective end user service offerings.

1.17 "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.18 "Major Trading Area" or "MTA" means Major Trading Area as used by the FCC in licensing CMRS.

1.19 "Multifrequency" means a signaling system for use between switching systems which uses a method of sending pulses over a circuit by using one pair of tones from a total set of five tones to encode each digit.

1.20 "NXX" means a three-digit code valid within an area code which appears as the first three digits of a seven-digit telephone number with the exception of the special 500, 600, 700, 800 and 900 codes and other similar special codes which may come into common usage in the future.

1.21 "Party" means either Duo County Telephone Cooperative Corp., Inc. or ACC of Kentucky, and "Parties" means Duo County Telephone Cooperative Corp., Inc. and ACC of Kentucky.

1.22 "Point of Connection" or "POC" is a mutually agreed upon point of demarcation between networks where the delivery of traffic from one Party to the other Party takes place.

1.23 "Rate Center" means the specific geographic point ("Vertical and Horizontal" ["V & H"] coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V & H coordinate, which is used to measure distance-sensitive end user traffic to/from, the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area. The use by a CMRS provider of a Rate Center V & H for mobile CMRS services has no specific geographic meaning.

1.24 "Telecommunications" is as defined in the Act.

1.25 "Telecommunications Act" or "Act" means the Telecommunications Act of 1996.

1.26 "Telecommunications Carrier" is as defined in the Act.

1.27 "Termination" is, with respect to the traffic delivered by one Party to the other over the facilities established pursuant to this Agreement, the switching of such traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

1.28 "Transport" is, with respect to the traffic delivered by one Party to the other over the facilities established pursuant to this Agreement, the transmission and any necessary tandem switching of such telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

## **2.0 Interpretation and Construction**

2.1 All references to Sections, Exhibits, Appendices and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of references only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including ACC of Kentucky's, Duo County Telephone Cooperative's or other third party offerings, guides or practices), statute, regulation, rule or tariff is for

convenience of reference only and is not intended to be a part of or to affect the meaning of rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 The Parties acknowledge that some of the services, facilities or arrangements described herein reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail. This Agreement supersedes any prior agreements between the Parties.

### 3.0 Scope

To be added

### 4.0 Service Agreement

4.1 To be added

4.2 To be added

4.3 Signaling - SS7 connectivity may be provided by mutual consent. SS7 connectivity will be provided in accordance with prevailing industry standards. The Parties agree to cooperate on the exchange of all appropriate SS7 messages for local call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate full interoperability of all CLASS features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon. All SS7 signaling parameters will be provided in conjunction with traffic trunk groups, where and as available. These parameters include, but are not limited to, Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, calling party category information, charge number, etc. All parameters related to network signaling information will also be provided, such as ACC of Kentucky Information Parameter ("CIP"), wherever such information is needed for call routing and billing. Each Party will honor all Privacy Indicators as required under applicable law. ACC of Kentucky must interconnect, directly or indirectly, with the Duo County Telephone Cooperative Signal Transfer Points ("STPs") serving the Local Service Area in which Local Service Area Traffic and inter-MTA traffic will be exchange. Duo County Telephone Cooperative may use a third party's STP and SCP facilities. ACC of Kentucky may choose a third-party SS7 signaling provider to transport signaling messages to and from Duo County Telephone Cooperative's SS7 network. In that event, ACC of Kentucky's third-party provider must present a letter of agency to Duo County Telephone Cooperative authorizing the third party to act on behalf of ACC of Kentucky. The third-party provider for ACC of Kentucky must interconnect with the Duo County Telephone Cooperative STP(s) serving the geographic area in which the traffic exchange trunk groups are located. ACC of Kentucky will be responsible for all costs associated with establishing SS7 connectivity between Duo County Telephone Cooperative and ACC of Kentucky. Where SS7 signaling is not available, in-band signaling shall be used in accordance with accepted industry standards.

### 5.0 Compensation Arrangements

To be added.



**6.0 Notice of Changes**

To be added.

**7.0 General Responsibilities of the Parties**

To be added.

**8.0 Effective Date, Term and Termination**

To be added.

**9.0 Cancellation Charges**

To be added.

**10.0 Indemnification**

10.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by any other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 6.0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

10.2 The indemnification provided herein shall be conditioned upon:

(1) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

(2) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.

(3) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not unreasonably withheld.

(4) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.

(5) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

10.3 In addition to its indemnity obligations under Section 10.1 and 10.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 11.2, below).

#### **11.0 Limitation of Liability**

11.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 11. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions, interruptions, delays, errors or defects occurring in the course of furnishing any services, arrangements or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions interruptions, delays, errors or defects.

11.2 Neither Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 10.

11.3 The Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties shall assert the applicability of any limitation on liability to customers that may be contained in either Party's applicable tariff(s) or customer contracts.

#### **12.0 Compliance with Laws and Regulations**

To be added.

#### **13.0 Disclaimer of Representation and Warranties**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

## 14.0 Miscellaneous

### 14.1 Authorization

14.1.1 Duo County Telephone Cooperative is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

14.1.2 ACC of Kentucky is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

### 14.2 Disclaimer of Agency; No Third Party Beneficiaries, Independent Contractor

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

14.3 Force Majeure - Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions fire, explosion, power failure, acts of God, war, revolution, civil commotion or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affected Party shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interferences (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

### 14.4 Treatment of Proprietary and Confidential Information

To be added.

14.5 Choice of Law - The construction, interpretation, enforcement and performance of this Agreement shall be in accordance with the laws of the State of Kentucky without regard to its conflict of laws and principles.

## 14.6 Taxes

14.6.1 It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply:

### 14.6.2 Definitions

14.6.2.1 For purposes of this Subsection 11.6, the terms "taxes" and "fees" shall include but not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights-of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments thereof, excluding any taxes levied on income.

14.6.2.2 The term "Providing Party" shall mean the Party whose rates apply to the transaction. The term "Purchasing Party" shall be the Party responsible for payment of compensation under this Agreement with respect to a transaction. The term "Selling Party" shall have the same meaning as Providing Party.

### 14.6.3 Taxes and Fees Imposed Directly on Either Seller or Purchaser

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

14.6.3.2 Taxes and fees imposed on the Purchasing Party, which are not required to be collected and/or remitted by the Providing Party, shall be borne and paid by the Purchasing Party.

### 14.6.4 Taxes and Fees Imposed on Purchaser but Collected and Remitted by Seller

14.6.4.1 Taxes and fees imposed on the Purchasing Party shall be borne by the Purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the Providing Party.

14.6.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party remains liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.4.3 If the Purchasing Party determines that in its opinion any such taxes or fees are not payable, the Providing Party shall not bill such taxes or fees to the Purchasing Party if the Purchasing Party provides written certification, reasonably satisfactory to the Providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the Purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the Providing Party, the

Purchasing Party may contest the same in good faith, at its own expense. In any such contest, the Purchasing Party shall promptly furnish the Providing Party with copies of all filings in any proceeding, protest or legal challenge, all rulings issued in connection therewith, and all correspondence between the Purchasing Party and the taxing authority.

14.6.4.4 In the event that all or any portion of any amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.6.4.5 If it is ultimately determined that any additional amount of such tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.6.4.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.

14.6.4.7 Each Party shall notify the other Party in writing of any assessment proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### 14.6.5 Taxes and Fees Imposed on Seller But Passed On to Purchaser

14.6.5.1 Taxes and fees imposed on the Providing Party, which are permitted or required to be passed on by the Providing Party to its customers, shall be borne by the Purchasing Party.

14.6.5.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.5.3 If the Purchasing Party disagrees with the Providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the Providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the Purchasing Party shall abide by such determination and pay such taxes or fees to the Providing Party. The Providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees, provided, however, that any such contest undertaken at the request of the Purchasing Party shall be at the Purchasing Party's expense.

14.6.5.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of such tax or fee, or to avoid the existence of a lien on the assets of the Providing Party during the pendency of such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.6.5.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.6.5.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect, indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.

14.6.5.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

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

14.7 To be added.

14.8 To be added

14.9 To be added.

14.10 To be added.

14.11 To be added

14.12 To be added.

14.13 Survival - The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

14.14 To be added.

14.15 Non-Waiver - Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

14.16 To be added

14.17 To be added -

14.18 To be added

14.19 Modification, Amendment, Supplement or Waiver - No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of

either Party to enforce any of the provisions hereof, to exercise any option which is herein provided or to require performance of any of provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
as of this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

ACC of Kentucky, LLC

Duo County Telephone Coop. Corp., Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: William W. Magruder

Title: \_\_\_\_\_

Title: Executive Vice President

July 31, 2001

17605-9.16.1

VIA TELECOPIER & U.S. MAIL

William W. Magruder  
General Manager  
Duo County Telephone  
1021 West Cumberland Avenue  
Jamestown, KY 42629-0080

Re: ACC of Kentucky LLC/Duo County Telephone Interconnection (Outstanding Issues)

Dear Mr. Magruder:

Pursuant to your request during our conference call on May 10, 2001, I have again reviewed the draft agreement provided by Duo County in order to verify the substantive differences between Duo County and ACC. With one possible exception, each of these was discussed during the conference call. Thus:

1. Section 1.15 of the draft states that Duo County is entitled to access charges both when it originates and when it terminates an inter-MTA call. ACC agrees with the language as it relates to calls terminated by Duo County. It also agrees that access charges should be paid where an inter-MTA, land-originated call is delivered by either party to an IXC. ACC does not agree that access charges should be paid to Duo County when an inter-MTA call is delivered directly by Duo County to ACC for termination by ACC. We concede that the FCC's language on this particular point is not entirely clear.

2. The last sentence of Section 1.23 should be omitted.

3. Section 3.3 of the draft, at line 4, should be modified to state that "all non-local traffic [etc.]".

4. Section 3.5 at line 3 should be modified to state that "this Agreement does not obligate either party to deliver non-local traffic [etc.]".

5. The next to the last sentence of Section 4.1 says that "this Agreement does not apply to ... traffic originated, terminated or carried by or on third-party networks." The sentence



is confusing, as other parts of the Agreement explicitly provide for calls that are carried by IXCs. See for example Section 3.3.

6. Section 4.2.2.3 states that “delivery of traffic... is at the option of the respective originating party”. For reasons that have been stated, ACC contends that the traffic exchange provisions of the Act require each party to directly interconnect with the other (on a proper request by the non LEC party), and that an ILEC may not evade the reciprocal compensation obligations of the Act by delivering local calls to an IXC for termination.

7. Section 4.2.2.4 contains language to the effect that NXX number assignments by ACC are “arbitrary”, and that Duo County may unilaterally change or terminate its treatment of ACC’s designated rate centers. For reasons discussed on May 10<sup>th</sup>, ACC does not agree.

8. Section 5.1.1 states that Duo County “will not provide any compensation to ACC of Kentucky for traffic [originated by Duo County] for which Duo County Telephone Cooperative has chosen not to charge the originating end-user a per-minute fee.” For reasons stated on May 10<sup>th</sup>, ACC is entitled to termination compensation for all local calls originated by Duo County and terminated by ACC.

9. Sections 5.4 and 5.5 cross reference Appendix A. Appendix A sets forth proposed billing percentages. ACC’s counterproposal is 72:28 for mobile/land:land/mobile ratios and 3.5% for inter-MTA traffic. Of inter-MTA traffic, two-thirds would be deemed interstate. ACC does not have a paging operation and nothing should be attributed to paging. We request that Duo County furnish us with its intrastate and interstate access charges as they would be applied to non-local traffic, as well as with the special access rates that would be applied to the link between Russell Springs and the Russell Springs cell site.

10. Section 8.2 is worded in a way which does not provide sufficient time to renegotiate (within the timeline set up by the Act) a new Interconnection Agreement in the event the existing one is terminated without default by either party. ACC suggests that when a party requests termination of an existing Agreement, and the other party invokes the negotiation provisions of the Act, the existing Agreement will remain in effect until a new one is negotiated or arbitrated in compliance with the time lines set up by the Act.

11. Appendix B establishes asymmetrical rates which do not appear to be based on an actual forward-looking cost study by Duo County. The rates should be symmetrical and should be based on forward-looking costs.

William W. Magruder  
July 31, 2001  
Page 3

12. Appendix C requires ACC to identify NXXs that are rated and routed within the Duo County service area. The list appears to be correct, i.e.:

|                               |                  |
|-------------------------------|------------------|
| Burkesville:                  | 270-406          |
| Fairplay/Columbus:            | 270 – 250        |
| Russell Springs (end office): | to be designated |

I look forward to further discussing these matters on May 23, 2001.

Sincerely,

David M. Wilson

DMW:lmb

Enclosure

cc: Steve Watkins (w/ enc.)  
Hugh Jeffries (w/ enc.)  
John Herbst (w/ enc.)  
Ron Ripley (w/ enc.)



RECEIVED  
MAY 29 2001

**William W. Magruder**  
Executive Vice President  
and General Manager

May 22, 2001

Mr. David Wilson  
Wilson & Bloomfield LLP  
1901 Harrison Street, Suite 1630  
Oakland, CA 94612

Dear Mr. Wilson:

I am in receipt of your two letters dated May 15, 2001 on behalf of your client, ACC of Kentucky LLC ("ACC"). With this letter, Duo County Telephone Cooperative ("Duo County") is responding to the first letter captioned as "Your letter of May 11, 2001" which refers to Duo County's letter to ACC dated May 11, 2001.

Item #1: As cited in our letter of May 11, Duo County is fully aware of the rules which govern an interim transport and termination arrangement.

Item #2: The rates contained in the draft proposed agreement that Duo County provided to ACC are either the same rates, or are actually lower, than the rates Duo County has in place with a CMRS provider competitor of ACC.

Duo County has not conducted any specific study of cost with respect to transport and termination. In any event, the 1996 Act states at Section 252(2)(B)(ii) that neither the Federal Communications Commission nor state commissions are authorized to require carriers to maintain records with respect to the costs of transporting and terminating calls.

Duo County's proposed transport and termination rates are based on the same approach as that used to develop rates for other CMRS-LEC interconnection agreements. The components of the transport and termination rate elements are those that are identical to the subset of network functions (i.e., end office switching, tandem switching and transport) that Duo County provides in the context of interstate access services. I am attaching as Addendum A the worksheet calculating and displaying the rates proposed in our draft agreement. These rates will require further evaluation given the subset of end offices to which ACC intends to terminate traffic according to your May 15 request. The composite rates will require recalculation.

Your letter also discusses "default prices". The FCC's rules addressing what has been referred to as "default prices" were vacated by the United States Court of Appeals for the Eighth Circuit in Case No. 96-3321 issued on July 18, 2000. Specifically, Section 51.707 of the FCC's rules, among others, was vacated by the 8<sup>th</sup> Circuit Court. The provision which discusses the "default price ranges described in Section 51.707" as set forth in Section 51.715(b)(1) of the rules

EXHIBIT F

**ADDENDUM A**

**NET CHARGEABLE RATE ELEMENTS TO CMRS  
3/31/2001 NECA RATES**

|  |                        |
|--|------------------------|
| Weighted Average End Office Transport – See Attached Exhibit A | 0.002430               |
| Tandem Switching   | 0.004077               |
| Transport Interconnection Charge (RIC)                         | 0.00919                |
| Local Switching  | 0.01131                |
| Information Surcharge  | 0.000148               |
| <b>TOTAL</b>   | <b><u>0.027155</u></b> |

**NET CHARGEABLE RATE ELEMENTS TO LEC  
3/31/2001 NECA RATES**

|   |                        |
|---|------------------------|
| Local Switching   | 0.01131                |
| Information Surcharge   | 0.0001458              |
| Less:   |                        |
| LEC Credit for Weighted Average Transport from Fairplay and<br>Burkesville End Offices (See Attached Exhibit B) | <u>-0.001500</u>       |
| <b>TOTAL</b>  | <b><u>0.009956</u></b> |

K R A S K I N, L E S S E & C O S S O N, L L P  
A T T O R N E Y S A T L A W  
T E L E C O M M U N I C A T I O N S M A N A G E M E N T C O N S U L T A N T S

2120 L Street, N.W., Suite 520  
296-8890  
Washington, D.C. 20037  
296-8893

Telephone (202)

Telecopier (202)

By Electronic Mail and U.S. Mail

May 23, 2001

Mr. David Wilson  
Wilson & Bloomfield, LLP  
1901 Harrison Street, Suite 1630  
Oakland, California 94612

Re: CMRS-LEC Interconnection

Dear Mr. Wilson:

On behalf of Duo County Telephone (“Duo County”), I am providing this response to your letter dated May 15, 2001 sent on behalf of ACC of Kentucky, LLC (“ACC”) captioned by ACC as “Outstanding Issues.”

1. Duo County does not originate inter-MTA calls. Duo County’s only involvement in calls to distant locations is with respect to access services that it provides to other carriers that carry calls to distant locations.

The FCC decided that the only traffic (and only with respect to a CMRS-LEC interconnection) that qualifies for the transport and termination under Section 251(b)(5) of the Act is CMRS-LEC traffic that originates and terminates within the same MTA. 47 C.F.R. 51.701(a) and (b)(2). A call that originates in one MTA and terminates in another MTA is not a “local” call for these purposes; it is an interexchange call for which Part 69 access charge rules apply.

Local exchange carriers provide access services for the origination and termination of interexchange traffic. Local exchange carriers receive access charge payment for both origination and termination. This is the framework set forth in Part 69 of the FCC’s rules since 1984. The FCC confirmed in its interconnection decision in 1996 that its interconnection rules did not modify its Part 69 access charge framework for interexchange traffic.

The FCC confirmed that local exchange carriers provide access services “just as they did prior to enactment of the 1996 Act.” August 8, 1996 Interconnection Order at para. 1034. Moreover, for a call that originates from a Duo County end user in the MTA in which the Duo County’s end offices are located, it will be ACC that is acting as an

interexchange carrier if it carries this call to another MTA. The FCC addressed this and other similar interexchange calling situations (at footnote 2485 of its August 8, 1996 Interconnection Order) in its discussion of the Section 251(b)(5) requirements:

“[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber’s local cellular number will be routed to them over interstate facilities when the customer is “roaming” in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. **In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge . . . . Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier’s carrier [i.e., access] charges is defined by § 69.5(b) of our rules.”** *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284-85, n.3 (1986) . . . .

[Emphasis Added.]

In summary, the terms of reciprocal compensation only apply to intra-MTA traffic and not to inter-MTA traffic. Paragraph 1034 of the FCC’s August 8 Order concludes that “reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.” Inter-MTA traffic is not local service area traffic. Inter-MTA traffic is interexchange traffic subject to charges under the framework of “access.”

Your concession about the lack of clarity arises because the terms and conditions of CMRS-LEC interconnection with Bell companies, about which CMRS providers are most familiar, have masked these issues. Bell companies are toll providers (i.e., intraLATA interexchange carriers) and have obtained terms and conditions with CMRS providers under which the Bell company terminates its toll traffic to the CMRS provider at reciprocal compensation rates. The Bell companies have apparently been willing to disregard the inter-MTA issue in return for this approach to termination of toll traffic. The “compromise” is advantageous to the Bell company for purposes of termination of toll calls. However, this “compromise” is not applicable to Duo County.

No changes to Section 1.15 are warranted because the terms and conditions are consistent with the controlling rules and requirements.

2. The last sentence of Section 1.23 cannot be omitted. The last sentence is a statement of fact for which there cannot be dispute. To omit the last sentence would suggest that the parties do not understand or agree on the facts.

For wireless service within the 38 counties (and beyond), ACC has an inventory of NPA-NXX numbers that it uses to assign to mobile customers. There is no geographic mobile service use distinction with respect to the assignment of these numbers; there is no requirement that mobile users make or receive calls using these numbers in the specific geographic area associated with the numbers; and ACC does not confine its users to any specific geographic area based on the number assigned to the user. Therefore, if the last

sentence were omitted, the terms and conditions between the parties would be subject to confusion and unnecessary subjective and arbitrary interpretation.

For these reasons, Section 1.23 should not be modified.

3. If the ACC proposed language is with respect to the sentence dealing with IXC traffic, then the qualifying phrase is not needed because all traffic received from an IXC or “handed off” to an IXC is, by definition, not “local” because IXC traffic is not even within the scope of the agreement. If the ACC suggested words were added, it would beg an interpretation that would confuse this reality. For this reason, no change is warranted.

4. Again, any traffic originated or terminated by either party that is not delivered over the facilities to be established pursuant to the agreement will be outside the scope of CMRS-LEC interconnection between the parties and outside the scope of the agreement. Therefore, the suggested word change would confuse the meaning of the agreement. Moreover, ACC has been, is now, and will remain free to provision the routing and delivery of its service traffic according to its own design and according to the options available to ACC. Duo County intends to maintain the same right. The provision simply states this expectation for both parties. Accordingly, no change is warranted.

5. The sentence is not confusing. The agreement clearly states that there will be no traffic subject to the terms of this agreement that will be originated, terminated, or carried by or on a third party. The discussion in Section 3.3 is to make explicit types of traffic that are not within the scope of the agreement. Any traffic that is originated, terminated or carried by or on a third party network is not within the scope of the agreement. Therefore, the last sentence of Section 4.1 is explicit and consistent with the other provisions of the agreement.

6. ACC’s observation under item 6 does not suggest any changes. As stated above, ACC retains options regarding the manner it routes and terminates traffic to the network of Duo County. Duo County intends to maintain its rights to provision its own service traffic.

Regardless, ACC’s observation about Section 4.2.2.3 and “delivery” of traffic does not recognize the specific context of that section and sentence. Section 4.2.2.3 refers specifically to sections 4.2.2.1 and 4.2.2.2 which discuss a voluntary recognition, on the part of Duo County, of non-geographic specific rate centers associated with mobile customer’s telephone numbers (see item 2, above). While Duo County is prepared to recognize this arbitrary approach for purposes of moving forward with resolving the agreement, there may be other approaches in the future for which Duo County intends to keep it options open. (For example, it will apparently be possible to determine the actual location of a mobile customer on a real-time basis thereby suggesting the possibility that the treatment of a call to or from a mobile customer could be based on the actual geographic location of the mobile caller instead of the arbitrary number assignment.)

More generally, ACC’s discussion here confuses “origination” of traffic with “termination” of traffic. Each party’s obligation to the other is to transport and terminate traffic that the other delivers over the CMRS-LEC interconnection facilities established



pursuant to the agreement. A party may be obligated to provide specific forms of compensation (consistent with the terms of the agreement) to the other for the transport and termination of specific traffic that the party delivers to the other for termination over the facilities pursuant to the agreement. A party's obligation to provide compensation is only with respect to traffic that it actually delivers for termination and only with respect to traffic for which it obtains transport and termination from the other party. If a third-party carrier delivers traffic to either party for termination, it will be the obligation of the third-party provider to provide transport and termination compensation.

For these reasons, no change is warranted for Section 4.2.2.3.

7. Consistent with the discussion of item 6, above, Duo County will revise the language as follows:

ACC agrees that Duo County's recognition of rate centers and the delivery of traffic pursuant to Sections 4.2.2.1 and 4.2.2.2 based on rate center V & H coordinates associated with NPA-NXX network numbers that ACC assigns to its mobile CMRS customers is applied only for the purposes of, and subject to all of the terms of, this Agreement. The designation of rate center V&H coordinates by ACC for NPA-NXX numbers assigned to ACC's mobile CMRS customers does not affect or determine the services offered by Duo County or ACC, the services provided to end users by either Party, the rate structure applied to services provided to end users by either Party, or the rates charged to end users by either Party for the services either Party provides. The voluntary use by the Parties of these practices based on the designation of rate center V&H coordinates for the NPA-NXX numbers assigned by ACC to its mobile CMRS customers does not create legal or regulatory obligations for either Party that do not otherwise apply. These voluntary practices are subject to change or termination by Duo County at any time.

8. This issue is open. While ACC has no right to determine how Duo County provides services to Duo County's end users, is it ACC's "preference" that Duo County provide services to its end users that allow Duo County's end users to place calls to some ACC numbers as part of Duo County's basic, flat-rated service offering? If the answer is yes, does ACC understand that ACC should also be prepared to accept changes in its rate structure and prices to its mobile users based on Duo County's "preference" of what ACC's customers should be charged for calling Duo County's customers?

9. These issues remain open.

Duo County is considering the propriety of the mobile/land directionality of traffic proposal. However, until the parties know what traffic they intend to deliver to the other with respect to the arrangement, it is premature to speculate about what are representative percentages.

With respect to the portion of traffic to and from ACC that will be jurisdictionally inter-MTA, the percentage proposed by ACC is unacceptably low. Assuming that ACC's CMRS service provision were actually confined to the 38 counties (a question exists as to whether that is a true statement), the existing operation of ACC with respect to other

LECs operating in other geographic areas does not represent the specific dynamics and the community of interest with the subset service territory of Duo County.

Regardless of what percentage of traffic should be considered inter-MTA, your suggestion that the inter-MTA portion should be considered two-thirds interstate and one-third intrastate is inconsistent with your position that the portion of inter-MTA traffic is related to the three Kentucky counties (Bracken, Mason and Louis) associated with the Cincinnati MTA. These counties are all in Kentucky. Even if we were to accept your percentage, it would seem that all of the inter-MTA traffic would be intrastate in nature.

Duo County is preparing a summary schedule of intrastate and interstate access rates and will forward the summary to ACC as soon as practicable.

10. Duo County is willing to modify the terms to include the following language in Section 8.2:

8.2.1 Post-Termination Arrangements. For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act, but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided by either Party to the other.

11. Duo County is revising the manner in which the rates are described in Appendix B. The revised presentation will address the issue of symmetrical rates.

12. The proper NPA-NXXs will be added to Appendix C prior to final resolution of the Agreement.

Sincerely,

Steven E. Watkins  
Principal, Management Consulting

cc: Mr. William Magruder  
Mr. Hugh Jeffries, via E-mail

## Interconnection Negotiations Matrix

|   | Issue   | Duo County  | ACC  | Resolved Issues   | Open Issues   |
|---|---|---|--|---|---|
| 1 | <b>System Architecture</b>  | n/a   | n/a  | ACC to pay for costs associated with transporting traffic between Richmond MTSO and Russell Springs cell site - Costs of dedicated facility between cell site and Duo County's Russell Springs tandem to be apportioned |   |
| 2 | <b>Rates for Dedicated Transport</b>                                      | n/a   | n/a  | \$433.00 (non recurring) \$353.64(monthly recurring)  |   |
| 3 | <b>Transport and Termination Rates</b>                                    | Rates based on interstate access charges including subsidy elements such as transport interconnection charges.  | Rates to be based on forward-looking costs only; no subsidy elements.  |   | X   |
| 4 | <b>Symmetricality</b>   | \$.027155 for terminating mobile to land calls v. \$.009956 for terminating land to mobile calls  | Transport and termination rates need to be symmetrical.  |   | X   |
| 5 | <b>Delivery of Local Traffic</b>  | Insistence on right to deliver land originated traffic through third party carriers including IXCs.   | All local traffic must be terminated directly between the parties.   |   | ACC is willing to accept the compromise position presented in Duo County's May 31, 2001 Settlement Proposal with the exception of Duo County's attempt to maintain the right to revise its position at any time during the term of the Agreement. |
| 6 | <b>Recognition of NXXs</b>  | ACC's designation of rates centers for its NXX's is arbitrary and need not be recognized by Duo County.   | The designation of rate centers for NXX's must be recognized in order to insure that local traffic is delivered and handled in a non-discriminatory manner.              |   | ACC is willing to accept the compromise position presented in Duo County's May 31, 2001 Settlement Proposal with the exception of Duo County's attempt to maintain the right to revise its position at any time during the term of the Agreement. |
| 7 | <b>Limitation of Termination Compensation for Measured-Rate Customers</b> | ACC is not entitled to termination and transportation compensation only for calls originated by Duo County's flat-rated customers.                              | The parties are entitled to compensation of all local traffic which they terminate regardless of the originating party's particular calling plan.                        |   | ACC is willing to accept the compromise position presented in Duo County's May 31, 2001 Settlement Proposal subject to the resolution of the other issues described herein.   |
| 8 | <b>Billing/Traffic Factors</b>  | Billing/Traffic factors based on general experience of Duo County principals.   | Billing/Traffic factors based on study of actual traffic from ACC's MTSO in Richmond.  |   | ACC is willing to accept the compromise position presented in Duo County's May 31, 2001 Settlement Proposal subject to the resolution of the other issues described herein.   |
| 9 | <b>Interim Arrangements</b>   | Duo County will provide interim arrangements only for mobile to land traffic and only at rates based on interstate access tariffs without any right of true-up. | ACC is entitled to immediate interim arrangements for all local traffic pursuant to 47 C.F.R. Section 51.715 including the right to true up interim rates per 51.715(d). |   | X   |