

AMENDMENT
TO
THE INTERCONNECTION AGREEMENT BETWEEN
FUZION WIRELESS COMMUNICATIONS, INC AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED APRIL 25, 2000

Pursuant to this Agreement (the "Amendment"), Fuzion Wireless Communications, Inc. ("Fuzion") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to as the "Parties", hereby agree to amend the Interconnection Agreement between the Parties dated April 25, 2000 ("Interconnection Agreement").

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

1. Attachment 4 to the Interconnection Agreement is hereby amended to incorporate the rates, terms, and conditions for microwave collocation attached hereto as Attachment A.
2. All of the other provisions of the Interconnection Agreement shall remain unchanged and in full force and effect.
3. Either or both of the Parties is authorized to submit this Amendment to the State Public Service Commission or other Regulatory Agencies for approval subject to Section 252 (e) of the Federal Telecommunications Act of 1996.

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

**Fuzion Wireless
Communications, Inc.**

BellSouth Telecommunications, Inc.

By: ON FILE
Signature

By: ON FILE
Signature

Name: David L. Frank
Printed Name

Name: Elizabeth R. A. Shiroishi
Printed Name

Title: President

Title: Managing Director

Date: February 16, 2001

Date: February 20, 2001

Attachment A

MICROWAVE COLLOCATION

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

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

1. PROVISIONING PROCESS AND FEES

A. Initial Site Visit

Fuzion will provide a Site Visit Request to BellSouth, in writing, setting forth the names of the BellSouth Central Office Buildings(s) Fuzion wishes to visit for potential Microwave Collocation. Such site visit consists of Fuzion representatives and appropriate BellSouth personnel visiting a BellSouth Central Office building for the purpose of determining whether an unobstructed line-of-sight is technically feasible. Fuzion will be responsible for making an unobstructed line-of-sight determination. Such Site Visit does not obligate Fuzion to request, or BellSouth to provide, Microwave Collocation on the site. The site visit will take place within ten (10) calendar days of receipt by BellSouth of Fuzion's Site Visit Request or as soon thereafter as can be scheduled by the Parties.

Fuzion will submit a Site Visit Request Fee as specified in Exhibit B, and will pay for the reasonable cost BellSouth incurs for travel, if necessary, which BellSouth shall provide Fuzion advance notice of, for each site requested with each Site Visit not to exceed two hours. Charges for site visits that take longer than two (2) hours will be charged by BellSouth to Fuzion at each BellSouth employee's loaded labor rate on an averaged per hour basis in addition to the Site Visit Request Fee. BellSouth will make every effort possible to use resources near the requested location to minimize travel required. If BellSouth determines that airline travel is required, BellSouth will contact Fuzion in an effort to discuss possible alternatives.

B. **Microwave Collocation Application**

This provision shall coincide with provisions under Section 6 and 7 of the collocation agreement.

BellSouth will respond to Microwave Collocation Application(s) pursuant to Section 6 of this Agreement.

Fuzion shall submit the Application and Inquiry document and appropriate collocation application fee pursuant to BellSouth's FCC #1, Section 20 tariff (for virtual) or Section 7 of this Agreement, in addition to a Microwave Collocation Attachment for each central office building where Fuzion seeks Microwave Collocation. This application and fees will apply both to space on the roof as well as space inside the BellSouth central office.

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

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

Roof Inspection: BellSouth may require a roof inspection at any site where Fuzion requests Microwave Collocation for the purpose of determining the location for coaxial cable entrance, location of microwave antenna(e), and surveying the ground network, etc. Fuzion will bear the cost of the inspection including reasonable travel cost if any. BellSouth intends to use an independent contractor which may be accompanied by BellSouth personnel. The roof inspection fee shall be assessed on an individual case basis unless negotiated as a flat rate by the Parties. BellSouth shall use best efforts to limit the number of individuals present to only those necessary and to use local BellSouth personnel when possible to conduct the Site Visit and if required, the Roof Inspection.

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

Escorted access to the roof will be provided as necessary by BellSouth pursuant to sub-Section 7.6 of this Agreement.

Should any state or federal regulatory agency impose procedures or intervals applicable to Fuzion that are different from procedures or intervals set forth in this

Attachment, those procedures or intervals shall automatically supersede, without the requirement of an amendment, the requirements set forth herein for that jurisdiction, unless otherwise agreed to by the Parties. This section applies to any state Order already in effect at the time of execution of this agreement.

BellSouth or its designated subcontractors shall perform all necessary work associated with the Microwave Collocation arrangement involving power and building modifications unless otherwise agreed to by the Parties. All work performed shall be done by a BellSouth certified vendor as referenced in provision 6.5 in the Collocation Agreement unless the Parties agree that another certified vendor will be used. The Parties acknowledge that Fuzion may become a certified vendor.

If rooftop/exterior space is available BellSouth shall provide Fuzion an estimate for such microwave collocation as described more fully in provision 1.C at the same time BellSouth provides its interior collocation space quote. Fuzion may use the microwave collocation arrangement in addition to a fiber entrance facility to obtain two interconnection points at each Premises.

C. Preparation of Estimate / Application Response

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

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

(2) Estimate:

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

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

This shall be assessed as part of the non-recurring Microwave Preparation Fee as specified in Exhibit B for BellSouth Architects or its contractors necessary to review the plans for the Microwave Collocation Arrangement. This will include applicable consulting charges and fees for reviewing permitting material and/or assisting Fuzion in the permitting process to the extent required.

(ii) **Permitting Review:**

This shall be assessed as part of the non-recurring Microwave Preparation Fee as specified in Exhibit B for BellSouth Property and Services Management and/or Project Managers whose time was reasonably necessary and actually spent reviewing permitting material and/or assisting Fuzion in the permitting process. BellSouth shall have final approval authority on all proposed conditions, (which shall not be unreasonably withheld) imposed by relevant jurisdictions and BellSouth shall have the right to be represented at all hearings in connection with governmental approvals.

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

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

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

This shall be assessed as part of the non-recurring Microwave Preparation Fee as specified in Exhibit B, if necessary, for BellSouth Property and Services Management personnel, Consultants, or Project Managers who monitor the Microwave Antenna Support Structure installation performed by Fuzion's contractor. The level of BellSouth's personnel or consultants shall be commensurate with the requirements for supervising the project and monitoring construction.

(v) **Special Security Construction:**

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

(b) **Recurring Charges**

These consist of:

(i) Monthly Recurring Roof-Top Space Rental Fee:

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

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

All estimates shall be valid for thirty (30) days from issuance, and Fuzion shall accept, reject or request changes within such time period, unless an extension is requested in writing by Fuzion and agreed to by BellSouth. Such extension will not exceed thirty (30) days. To accept an estimate, Fuzion shall so state in writing and shall pay BellSouth 50% of the total estimated charges ("Initial Payment") with the balance of the actual charges due upon completion of the Microwave Collocation area and any necessary supporting electrical or building modification work. Payment requirements will be commensurate with provision 7.1 of the collocation agreement.

D. Pre-Design Meeting

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

E. Equipment and Testing:

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

F. Use Permits:

Fuzion shall be responsible for obtaining all relevant Use Permits (Ups) and shall bear all costs and fees. BellSouth agrees to reasonably cooperate with Fuzion with regard to information and/or contact person information related to such Ups. Fuzion shall regularly apprise BellSouth of the status of such permitting and consult with BellSouth as reasonably necessary.

2. NO PROPERTY RIGHT CONFERRED

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

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

3. RESPONSIBILITY OF THE PARTIES

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

In the event Fuzion desires to relocate any of its then-existing Microwave Collocation facilities to a different place on the relevant BellSouth Central Office rooftop, Fuzion shall submit a new application with fee to BellSouth specifying the new location Fuzion

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

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

F. Fuzion's Insurance Obligations

Pursuant to Section 8 of the Collocation Attachment to the Interconnection Agreement.

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

4. SECURE ACCESS

Pursuant to Section 11 of the Collocation Attachment to the Interconnection Agreement.

5 CABLE PROVISIONING

Fuzion is responsible for providing, running, and maintaining the cable from the radio frequency (RF) equipment to the collocation cage through the use of a BellSouth Certified Vendor. BellSouth will be responsible for providing any necessary cable support structure at a rate indicated in Exhibit B. A BellSouth consultant must approve how the cable will be run.

6. LINE OF SIGHT

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

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

7. ANTENNA MODIFICATIONS

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

8. USE OF ANTENNA SPACE ON OTHER BELLSOUTH TOWERS

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

9. EQUIPMENT REMOVAL

If, at any time, BellSouth reasonably determines that any of Fuzion's facilities or equipment or the installation of Fuzion's facilities or equipment does not meet the requirements outlined in this Agreement, Fuzion will be responsible for the costs associated with the removal of such facilities or equipment or modification of the facilities or equipment or installation thereof to render it compliant. The removal of equipment must be done by a BellSouth Certified Vendor unless the Parties agree that another certified vendor can be used. If Fuzion fails to correct any non-compliance with these standards or fails to demonstrate that the equipment is compliant within fifteen (15) days' written notice to Fuzion, BellSouth may have the facilities or equipment removed or the condition corrected at Fuzion's expense. Removal of Microwave Collocation equipment shall be pursuant to provision 4.3 in the Collocation Agreement. In the event of a disagreement between the Parties with regard to the collocated microwave equipment which can not be resolved, the dispute resolution provisions of the Parties' Interconnection Agreement can be invoked by either Party.

10. NATURE OF USE

Fuzion equipment must comply with BellCore Network Equipment Building System (NEBS) Requirements, Electromagnetic Compatibility and Electrical Safety Generic Criteria for Network Telecommunication Equipment (TR-NWT-001089), and FCC OET Bulletin 65 dated 08/97. Requirements of provision 5.1 of the Collocation Agreement also apply. The operation of Fuzion's microwave equipment shall comply with all applicable federal and state RF guidelines.

11. POWER REQUIREMENTS FOR MICROWAVE ARRANGEMENT

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

such services. In such case requirements set forth in provision 7.5 of the Collocation Agreement will apply.

12. GROUNDING AND BONDING

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

13. COLLOCATION AGREEMENT PROVISIONS

Any provision provided specifically herein shall be in addition to applicable provisions in the Collocation Agreement.

MICROWAVE COLLOCATION RATE ELEMENT DEFINITIONS AND CONDITIONS

Non-recurring charges - Relating to Microwave Roof Equipment

1) **Microwave Preparation Fees**

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

2) **Coring/Cable Support Structure**

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

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

Engineering Study (To develop roof preparation alternatives/costs)

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

Charge for access to Roof

Recurring charges - Relating to Microwave Roof Equipment

1) **Roof Space Lease Charge**

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

MICROWAVE COLLOCATION RATES

Non-recurring charges *

- | | |
|--|-------------------------------------|
| 1) Site Visit Request Fee (2 hours) | \$250.00 Per Site Visit for each CO |
| 2) Microwave Prep fee | [ICB FOR EACH CO] |
| 3) Coring/Cable Support Structure | [ICB FOR EACH CO] |
| 4) Roof Preparation/Exterior Cable Support Structure | [ICB FOR EACH CO] |
| 5) Microwave Installation | [ICB FOR EACH CO] |
| 6) Additional Charges** | [BASED ON ICB] |

* With the exception of Additional Charges, all Non-recurring Charges shall be assessed on an interim basis subject to true up based on a BellSouth cost study to determine the appropriate cost for such activities.

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

Monthly recurring rates *

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

* All Recurring rates shall be assessed on an interim basis subject to true up based on a BellSouth cost study to determine the appropriate cost for such activities.

** A minimum of 12 square feet is required per microwave arrangement.