

**AGREEMENT FOR INTERCONNECTION AND ANCILLARY SERVICES**

**BETWEEN**

**AVENTURE COMMUNICATIONS TECHNOLOGY, L.L.C.**

**AND**

**EASTERN NEBRASKA TELEPHONE COMPANY**

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## **INTRODUCTION**

This Agreement for Local Interconnection ("Agreement") made this \_\_\_\_\_ day of September, 2006, is by and between Aventure Communications Technology, L.L.C. ("Aventure") and Eastern Nebraska Telephone Company ("Eastern"). Eastern and Aventure may also be referred to herein singularly as a "Party" or collectively as "the Parties."

### **Section 1.0 – RECITALS**

WHEREAS, Eastern is an incumbent Local Exchange Carrier providing Telephone Exchange Service and Exchange Access in the State of Nebraska;

WHEREAS, Aventure is a Competitive Local Exchange Carrier providing Telephone Exchange Service and Exchange Access in the State of Nebraska;

WHEREAS, Eastern and Aventure exchange calls between their networks and wish to establish Interconnection and Reciprocal Compensation arrangements for exchanging traffic as specified below;

WHEREAS, Eastern certifies that it is a rural telephone company and is exempt from Section 251(c) pursuant to Section 251(f) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act");

WHEREAS, Aventure confirms to Eastern that its request for interconnection with Eastern was only intended to address the interconnection obligations under Section 251(a) and (b) of the Act and the procedures for negotiation, arbitration and approval of agreements under Section 252 of the Act;

WHEREAS, Sections 251 and 252 of the Act have specific requirements for Interconnection, and the Parties intend that this Agreement meets these requirements.

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, Eastern and Aventure hereby agree as follows:

### **Section 2.0 - DEFINITIONS**

2.1 "Access Service Request" or "ASR" means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between the Parties for Local Interconnection Service.

2.2 "Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

2.3 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as

amended by the Telecommunications Act of 1996.

2.4 "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

2.5 "Bona Fide Request" or "BFR" means a request for a new interconnection not already available in this Agreement for the provision of local telecommunications services.

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

2.6.1 "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

2.6.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. Access tandems provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service EAS/Local Traffic.

2.7 "Commission" means the Nebraska Public Service Commission.

2.8 "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.

2.9 "Competitive Local Exchange Carrier" or "CLEC" refers to an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier ("ILEC").

2.10 "DS1" is a digital signal rate of 1.544 Megabits per second (Mbps).

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

2.12 "Exchange Service" or "Local Traffic" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as defined by Eastern's then current local serving areas as determined by the Commission.

2.13 "Firm Order Confirmation Date" or "FOC" means the notice that the providing Party provides to the requesting Party to confirm that the requesting Party's Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by the providing Party for the provisioning of the service requested.

2.14 "Interconnection" for purposes of this Agreement is the linking of Eastern and Adventure networks for the exchange of Local Traffic described in this Agreement.

2.15 "Interexchange Carrier" (IXC) means a Telecommunications Carrier that provides Telephone Toll Service, as defined by the Act.

2.16 "Internet Related Traffic" refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.

2.17 "Local Exchange Carrier" (LEC) is as defined by the Act.

2.18 "Local Interconnection Service (LIS)" describes a service or trunk group used to transmit Local Traffic" between the Eastern network and Aventure's Network. .

2.19 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services such as LNP.

2.20 "Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

2.21 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

2.22 "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

2.23 "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs.

2.24 "Proof of Authorization" ("POA") is the verification of the end user's selection and authorization adequate to document the end user's decision to change local service providers.

2.25 "Rate Center" means the specific geographic point (associated with one or more specific NPA-NXX codes and various Wire Centers), being used for billing and measuring Telecommunications Service. For example, a Rate Center will normally include several Wire Centers within its geographic area, with each Wire Center having one or more NPA-NXXs.

2.26 "Reciprocal Compensation" means an arrangement between two carriers in which each receives compensation from the other carrier for the transport and termination on each carrier's network of Local Traffic, as defined in Section 2.12 above, that originates on the network facilities of the other carrier.

2.27 "Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular end-user premises.

2.28 "Service Date" or "SD" means the date service is made available to the end-user.

2.29 "Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

2.30 "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, Phone to Phone IP Telephony, 8XX access, and 900 access and their successors or similar Switched Access services. Switched Access traffic, as specifically defined in interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users.

2.31 "Tariff" as used throughout this Agreement refers to the Parties' interstate Tariffs and intrastate Tariffs, price lists, price schedules and catalogs.

2.32 "Telecommunications Carrier" has the meaning given in the Act.

2.33 "Telephone Toll Service" has the meaning given in the Act.

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

2.35 "Termination" means the switching of Local Traffic at the terminating carrier's End Office Switch, or equivalent facility, and delivery of such traffic to the called party.

2.36 "Transiting Traffic" is traffic that originates from one provider's network, "transits" one or more other provider's network substantially unchanged, and terminates to yet another provider's network.

2.37 "Transport" means the transmission and any necessary tandem switching of Local Traffic subject to Section 251(b)(5) of the Act from the Point of Interconnection 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.

2.38 "Wire Center" denotes a building or space within a building that serves as an aggregation point on a given carrier's network, where transmission facilities are connected or switched.

### **Section 3.0 – INTERPRETATION AND CONSTRUCTION**

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference 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 or other third party offering, guide or practice, 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 a 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).

### **Section 4.0 – SCOPE**

4.1 This Agreement is intended, inter alia, to describe and enable specific Interconnection and Reciprocal Compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

4.2 This Agreement sets forth the terms, conditions, and rates under which the Parties agree to interconnect the CLEC network of Aventure and the LEC network of Eastern for purposes of exchanging Local Traffic.

4.3 Aventure represents that it is a certified provider of telecommunications services to subscribers in Nebraska. Aventure's NPA/NXXs are listed in Telecordia's Local Exchange Routing Guide ("LERG"), and this Agreement shall apply to all Operating Company Numbers ("OCN") assigned to Aventure.

4.4 This Agreement is limited to Eastern's end user customers' traffic for which it has tariff authority to carry. Eastern's NPA/NXXs are listed in the LERG under OCN in the state of Nebraska.

## **Section 5.0 - IMPLEMENTATION SCHEDULE**

5.1 Except as otherwise required by law, the Parties will not provide or establish Interconnection and/or ancillary services in accordance with the terms and conditions of this Agreement prior to its execution. Thereupon, the Parties shall establish an interconnection implementation schedule as it applies to obtaining Interconnection and ancillary services hereunder.

5.2 Prior to placing any orders for services under this Agreement, each Party will provide to the other any information necessary to process a request for service.

## **Section 6.0 - TERMS AND CONDITIONS**

### **6.1 General Provisions**

6.1.1 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. 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.

6.1.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

6.1.3 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier ("CLLI") assigned to its switches.

6.1.4 911/E911. Each Party shall be responsible for its own independent connections to the 911/E911 network.

## **6.2 Term of Agreement**

The initial term will be for 2 years from the Effective Date. Thereafter, this Agreement will be renewed for successive one-year terms on the anniversary of the Effective Date unless the Parties forward a written request to terminate to the other Party not less than 90 days prior to the expiration date or it may terminate within 90 days of written mutual agreement. Upon termination or expiration of this agreement, each party shall continue to pay all amounts owed under this Agreement until a new Agreement has been signed by the Parties.

## **6.3 Proof of Authorization**

6.3.1 Where so indicated in specific sections of this Agreement, each Party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA"). POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained by the end user's written Letter of Authorization.

6.3.2 The Parties shall make POAs available to each other upon request, in accordance with applicable laws and rules. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.

## **6.4 Payment**

6.4.1 The Parties will prepare bills in accordance with industry standards and shall provide a bill for services monthly. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of the invoice. If either Party fails to pay for service when due, the billing Party shall include in the next bill late payment charges equal to 1.5 percent per month, or the maximum amount allowed by law, whichever is less.

6.4.2 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

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 written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") 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. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment of the disputed amount is required, whether for the original full amount or for the settlement amount, the Non-Paying Party shall pay the full disputed or settlement amounts with interest at the lesser



of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Nebraska's applicable law. In addition, the Billing Party may initiate a complaint proceeding with the appropriate regulatory or judicial entity, if unpaid undisputed amounts become more than 90 days past due, provided the Billing Party gives an additional 30 days notice and opportunity to cure the default.

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 (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Nebraska's applicable law.

Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party.

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

(a) Each Party shall comply immediately with its obligations as set forth in Section 6.4.2 above;

(b) Each Party shall promptly pay all undisputed amounts (including any late payment charges) owed under this Agreement;

(c) Each Party's indemnification obligations shall survive termination or expiration of this Agreement.

Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not implement mutually acceptable steps to remedy such alleged default within thirty (30) days after receipt of written notice thereof.

## **6.5 Taxes**

6.5.1 Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.

## **6.6 Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government

regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

## **6.7 Limitation of Liability**

6.7.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

6.7.2 Except as otherwise provided in Section 6.9 (Indemnification) no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

6.7.3 Except as otherwise provided in Section 6.9, no Party has any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

## **6.8 DISCLAIMER**

**EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.**

## **6.9 Indemnification**

Each Party will indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for (a) personal injuries, including death, or (b) damage to tangible property resulting from the sole negligence and/or sole willful misconduct of that Party, its employees or agents in the performance of this Attachment.

Each Party will defend the other at the other's request against any such liability, claim, or demand. Each Party will notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

#### **6.10 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.

#### **6.11 Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

#### **6.12 Assignment**

This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

#### **6.13 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.

#### **6.14 No Third Party Beneficiaries: Disclaimer of Agency**

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, 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, in the name of, 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.

#### **6.15 No License**

No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

#### **6.16 Technology Upgrades**

Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the update shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

#### **6.17 Severability**

In the event that anyone or more of the provisions contained herein, is, for any reason, held to be unenforceable in any respect under law or regulation, the remainder of this Agreement will not be affected thereby and will continue in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

#### **6.18 Confidentiality**

6.18.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (1) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be

mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 6.18.2 of this Agreement.

6.18.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief, which such Disclosing Party chooses to obtain.

6.18.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

## **6.19 Survival**

Any liabilities or obligations of a Party for acts or omissions prior to the completion of the one year term, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## **6.20 Dispute Resolution**

6.20.1 Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the State Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

6.20.2 At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not

be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

6.20.3 If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

6.20.4 The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations in accordance with this Agreement.

**6.21 Governing Law**

6.21.1 For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with the Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Nebraska without reference to conflict of law provisions.

6.21.2 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be adopted by any federal, state, or local government authority. Any modifications to this Agreement occasioned by such change shall be effected through good faith negotiations

**6.22 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; (iii) mailed, certified mail, return receipt requested to the following addresses of the Parties:

<b>Aventure Communications</b>	<b>Eastern</b>
Aventure Communications Technology 401 Douglas Street, Suite 406 Sioux City, Iowa 51101 Phone Number: 712-252-3800 Fax Number: 712-2770805	Eastern Nebraska Telephone Company PO Box 400 Blair, NE 68008 Phone Number: 402-426-4800 Fax Number: 402-426-6298
With a copy to:	With a copy to:  Dan Davis TELEC Consulting Resources, Inc.

	233 South 13 <sup>th</sup> Street, Suite 1225 Lincoln, NE 68508 Phone Number: 402-441-4315 Fax Number: 402-441-4317
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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; (iii) three (3) days after mailing in the case of certified U.S. mail.

### **6.23 Independent Contractors**

Neither this Agreement, nor any actions taken by Aventure or Eastern in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Aventure and Eastern, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by Aventure or Eastern in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Aventure and Eastern end users or others.

### **6.24 Entire Agreement**

The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

### **6.25 Compliance**

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, the Parties agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## **Section 7.0 - INTERCONNECTION**

### **7.1 Interconnection Trunking Arrangements**

7.1.1 The Parties will interconnect their networks as specified in the terms and conditions contained in Attachment 1, attached hereto and incorporated by reference. POIs set forth in this Attachment will not be unreasonably withheld. The Parties shall establish POIs in each local calling area. If the local calling area is served by a remote end office switch or remote terminal, the parties shall negotiate an alternative location for the POI for that local calling area.

7.1.2 Each Party will be responsible for the engineering and construction of its own network facilities on its side of the POI, however, should Eastern be required to modify its network to accommodate the interconnection request made by Aventure, Aventure agrees to pay Eastern reasonable charges for such modifications.

7.1.3 The Parties mutually agree that all interconnection facilities will be sized according to mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. The Parties further agree that all equipment and technical interconnections will be in conformance with all generally accepted industry standards with regard to facilities, equipment, and services.

7.1.4 Interconnection will be provided via two-way trunks. The mutually agreed upon technical and operational interfaces, procedures, grade of service and performance standards for interconnection between the Parties are set forth per Industry Standards and will conform with all generally accepted industry standards with regard to facilities, equipment, and services. All interconnection facilities and trunking will be ordered using industry standard ASR/LSR.

7.1.5 Interconnection is applicable only to Eastern's serving areas. Eastern will not be responsible for interconnections or contracts relating to any Aventure's interconnection with any other Carrier or locations outside of Eastern's service area.

## **7.2 Testing and Trouble Responsibilities**

Aventure and Eastern agree that each will share responsibility for all maintenance and repair of trunks/trunk groups. The Parties agree to:

7.2.1 Cooperatively plan and implement coordinated repair procedures for the local interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

7.2.2 Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.

7.2.3 Promptly notify each other when there is any change affecting the service requested, including the date service is to be started.

7.2.4 Coordinate and schedule testing activities of their own personnel, and as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date.

7.2.5 Perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other.

7.2.6 Provide each other with a trouble reporting number to a work center that is staffed 24 hours a day/7 days a week.

7.2.7 Immediately report to each other any equipment failure which may affect the interconnection trunks.



7.2.8 Based on the trunking architecture, provide for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.

### **7.3. Interconnection Forecasting**

7.3.1 Each Party will provide the other a two year forecast for expected trunk utilization. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment are available. Each Party will provide forecast information to the other.

7.3.2 The forecasts will include the number, type and capacity of trunks as well as a description of major network projects anticipated for the following six months. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecast period.

7.3.3 If a trunk group is under 75 percent of centum call seconds capacity on a monthly average basis for each month of any six month period, either Party may issue an order to resize the trunk group, which will be left with no less than 25 percent excess capacity. The Grade of Service for all Facilities between Eastern's Central Office and Aventure's will be engineered to achieve P.01 Grade of Service.

7.3.4 All requests by Aventure to Eastern to establish, add, change, or disconnect trunks will be made using the industry standard Access Service Request (ASR).

### **7.4 Exchange of Local Traffic**

7.4.1 This Section addresses the exchange of traffic between one Party's network and the other Party's network. Neither Party will interconnect or deliver traffic to the other from third parties. Neither Company shall deliver traffic from its subscribers outside the local calling area as specified above, either by means of central office translations or by call forwarding. Neither Company will deliver traffic on the trunks provided for in this agreement, which would otherwise be subject to access charges or other compensation. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

7.4.2 Traffic having special billing or trunking requirements will not be provided in this agreement. Such traffic may include, but is not limited to; Directory Assistance, 911/E911; Operator busy line interrupt and verify.

### **7.5 Reciprocal Compensation**

7.5.1 The Parties assume and agree that the exchange of Local Traffic between them is roughly balanced and de minimis unless traffic studies or traffic measurements indicate otherwise. Accordingly, neither Party will initially bill the other for the termination of Local Traffic. However, if either party performs a traffic analysis and determines that the Local Traffic exchanged between the Parties' networks is not roughly balanced and

de minimis (less than 10,000 minutes per month), the parties shall begin charging for the exchange of Local Traffic at the symmetrical compensation rate of \$0.02 per minute. The Parties agree that the decision of the United States Court of Appeals for the District of Columbia Circuit, No. 04-1368, Core Communications, Inc v. Level 3 Communications, LLC, ET. AL. shall apply.

7.5.2 Compensation for use of facilities for interconnection will be billed according to tariffed rates as specified in Eastern's applicable tariff.

## **Section 8.0 TRANSFER OF SERVICE**

8.1 The Parties agree to establish mutually acceptable, reasonable, and efficient transfer of service procedures that utilize the industry standard LSR format for the exchange of necessary information for coordination of service transfers between the Parties. The Party requesting customer transfer will provide the other Party a LSR five business days prior to the transfer due date. Each party will provide appropriate contact information for the purpose of exchanging requests for disconnect, service announcement initiation, and interim number portability, where technically feasible, activity between the Parties.

8.2 There will be no charges between the Parties or compensation provided by one Party to the other Party for the coordinated transfer of service activities, between normal hours of operation, 8am – 5 pm, Monday through Friday. Eastern may charge Aventure for coordinated transfer of service activities scheduled outside of the specified hours at the tariffed labor rates.

8.3 Each Party is responsible for obtaining a Letter of Authorization (LOA) from each end user initiating transfer of service from one Party to the other Party. The Party obtaining the LOA from the end user will furnish it to the other party upon request.

8.4 In the case where an end user changes service from one Party to the other Party and the end user does not retain its original telephone number, the Party from which the end user is transferring will honor requests for disconnect from the Party to which the end user is transferring. The Party to which the end user is transferring service will provide to the other Party the end user's name, address, current telephone number, new telephone number, and date service should be transferred using the industry standard LSR format. The Party from which the end user is transferring will coordinate with the other Party the disconnect to coincide with the service transfer request date.

8.5 In the case where an end user changes service from one Party to the other Party and the end user retains its original telephone number(s), the Party from which the end user is transferring will honor requests for disconnect and local number portability, where technically feasible, from the Party to which the end user is transferring. The Party to which the end user is transferring will provide the other Party the end user's name, address, current telephone number, new network number porting information, and date service should be transferred using the industry standard LSR format. The Parties will coordinate the disconnect, connect, and number portability activities in accordance with

the North American Numbering Council (NANC) flows. Should local number portability not be available, interim number portability or remote call forwarding will apply.

8.6 Each Party will accept transfer of service requests from the other Party for one end user that includes combined requests for transfers. The requesting Party will provide a minimum of 10 business days notice to the transferring Party on combined transfer requests.

8.7 From time to time, either Party may benefit from the transfer of service for groups. The Parties agree to process bulk transfer of service requests for end users having the same billing account number. The requesting Party will provide a minimum of 10 business days notice to the transferring Party on bulk transfer requests.

## **Section 9.0 INTERIM NUMBER PORTABILITY**

9.1 Interim Service Provider Number Portability ("ISPNP") is a service arrangement that can be provided by Eastern to Aventure or by Aventure to Eastern.

9.2 ISPNP allows an end user customer to transfer service from Eastern to Aventure and to retain their existing telephone number. ISPNP allows incoming calls to Eastern provided telephone numbers to be routed to Aventure's network for completion. ISPNP is available only for working telephone numbers assigned to Eastern's customers who request to transfer to Aventure provided service.

9.3 Eastern reserves the right to determine the type of serving arrangement used to redirect ISPNP calls to Aventure's network (e.g., remote call forwarding ("RCF")). Additional capacity for simultaneous call forwarding is available where technically feasible on a per path basis. Aventure will need to specify the number of simultaneous calls to be forwarded for each number ported and where LNP has not been implemented.

9.4 ISPNP is subject to the following restrictions:

9.4.1 An ISPNP telephone number may be assigned by Aventure only to its customers located within Eastern's local calling area and rate center which is associated with the NXX of the ported number.

9.4.2 ISPNP is applicable only if Aventure is engaged in a reciprocal traffic exchange arrangement with Eastern.

9.4.3 Only the existing, Eastern assigned end user telephone number may be used as a ported number for ISPNP.

9.4.4 ISPNP will not be provided by Eastern for Eastern's customers whose accounts are in arrears and who elect to make a change of service provider unless and until:

9.4.4.1 Full payment for the account (including directory-advertising charges associated with the customer's telephone number) is made by customer or Aventure agrees to make full payment on behalf of the customer.

9.4.4.2 Eastern is notified in advance of the change in service provider and a change of responsibility form is issued. Eastern accepts the transfer of responsibility.

9.4.5 ISPNP services will not be resold, shared or assigned by Aventure.

9.4.6 ISPNP is not offered for NXX Codes 555, 976, 960 and 1+ send-paid telephones, and service access codes (i.e. 500, 700, 800/888, 900). ISPNP is not available for FGA seven-digit numbers, including foreign exchange (FEX), FX and FX/ONAL and foreign central office service, as well as restrictions that may apply for unique services; e.g., DID, hunting arrangements. Furthermore, ISPNP numbers may not be used for mass calling events.

9.4.7 The ported telephone number will be returned to the originating company when the service associated with the ported number is disconnected. The company assigned the ported number may not retain it and reassign it to another customer. The normal intercept announcement will be provided by Eastern for the period of time until the telephone number is reassigned by Eastern.

9.4.8 When local number portability is available, ISPNP will no longer be provided by Eastern. Once the Eastern switch becomes local number portability capable, Eastern will notify Aventure. Aventure has 45 days to convert from ISPNP to local number portability.

9.5 Aventure will become the customer of record for the ported telephone number.

9.6 Aventure will be responsible for all future charges associated with the ISPNP arrangement including collect, third number billed calls and any other calls charged to the Eastern provided telephone number.

9.7 Aventure is responsible for all dealings with and on behalf of Aventure's end users, including all end user account activity, e.g. end user queries and complaints.

9.8 If an end user requests transfer of service from Aventure back to Eastern, Eastern may rely on that end user request to cancel the ISPNP service.

9.9 Certain features are not available with ISPNP telephone numbers. Calling party information passed to Aventure's network may reflect the Eastern provided telephone number.

9.10 Aventure's designated ISPNP switch must return answer and disconnect supervision to Eastern's switch.

9.11 Aventure will provide to the E911/911 database provider the network telephone number that Aventure assigned to the ported telephone number. Updates to and maintenance of the INP information to the E911/911 database are the responsibility of Aventure.

## **Section 10.0 LOCAL NUMBER PORTABILITY**

10.1 Eastern will only provide LNP services and facilities where technically feasible, subject to the availability of facilities, and only from properly equipped central offices. An LNP telephone number may be assigned by Aventure only to Aventure's customers located within Eastern's rate center, which is associated with the NXX of the ported number.

10.2 Eastern will participate in LNP testing in accordance with North American Numbering Council (NANC) standards.

10.3 Eastern will follow recommended National Emergency Number Association (NENA) standards for LNP until or as such time the standards are superceded by federal, state, or local legislation.

10.4 Aventure is responsible to coordinate with the local E911 and Public Services Answering Point (PSAP) coordinators to insure a seamless transfer of end user emergency services.

10.5 Aventure is required to meet, all mutually agreed upon, testing dates and implementation schedules. Both Parties will perform testing as specified in industry guidelines and cooperate in conducting any additional testing to ensure interoperability between networks and systems. Each Party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's request perform tests to validate the operation of the network.

10.6 Aventure is responsible to meet all Number Portability Administration Center (NPAC) and North American Numbering Council (NANC) requirements and in providing its own access to regional NPAC.

10.7 Aventure is responsible for providing its own access to the Service Order Administration (SOA).

10.8 Aventure is responsible to meet all the Industry requirements for LNP.

10.9 Each Party shall perform default LNP queries. Query services and charges are defined in the applicable tariffs, including End Office and Tandem Default Query Charges.

10.10 Both Parties shall comply with ordering standards as developed by the industry. LNP service is ordered via a Local Service Request and associated Number Portability forms.

## **Section 11.0 911/E911 SERVICE**

11.1 911 and E911 provides an end user access to the applicable emergency service bureau, where available, by dialing a 3-digit universal telephone number (911).

11.2 Automatic Location Identification/Data Management System (ALI/DMS). The ALI/DMS database contains end user information (including name, address, telephone number, and sometimes special information from the local service provider or end user) used to determine to which Public Safety Answering Point (PSAP) to route the call. The ALI/DMS database is used to provide more routing flexibility for E911 calls than Basic 911.

11.3 Basic 911 directly connects to the PSAP all 911 calls from one or more local

exchange switches that serve a geographic area. E911 provides additional selective routing flexibility for 911 calls. E911 uses end user data, contained in the ALI/DMS, to determine to which Public Safety Answering Point (PSAP) to route the call.

11.4 Each Party will be responsible for its own arrangements for E911 service.

11.5 Each Party will be responsible for compliance with all E911 service regulations as required by state and Federal rules.

11.6 If a third party is the primary service provider to a county, each Party will negotiate separately with such third party with regard to the provision of E911 service to the county. All relations between such third party are separate from this Agreement and neither Party makes no representations on behalf of the third party.

11.7 Each Party will separately negotiate with each county regarding the collection and reimbursement to the county of applicable end user taxes for E911 service.

11.8 Each Party is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard for the E911 call delivery.

11.9 Neither Party will reimburse the other for any expenses incurred in the provision of E911 services. All costs incurred by the Parties for E911 services shall be billed to the appropriate PSAP.

11.10 Each Party will be responsible for maintaining its own E911 database.

11.11 Each Party is responsible for its own E911 Database.

11.12 Each Party providing updates to the E911 database will be responsible for the accuracy of its end user records. Each Party providing updates specifically agrees to indemnify and hold harmless the other Party from any claims, damages, or suits related to the accuracy of end user data provided for inclusion in the E911 Database.

11.13 Each Party is responsible for its own interconnection to the E911 system.

11.14 The Parties will cooperate in the routing of E911 traffic in those instances where the ALI/ANI information is not available on a particular E911 call.

11.15 When a telephone number is ported out, the receiving Party shall be responsible to update the ALI/DMS database.

## **Section 12.0 WHITE PAGE DIRECTORY LISTINGS**

12.1 White Pages Listings Service (Listings) consists of placing the names, addresses and telephone numbers of end users in applicable listing database, based on end user information provided to each Party. Neither Party is authorized to use the other Party's end user listings without separate arrangements or amendment to this agreement.

12.2 Each Party is responsible for its own arrangements for white page listings.

12.3 Each Party shall transfer responsibility for its listings with the directory provider within 30 days of the number being transferred.

### **Section 13.0 DIRECTORY ASSISTANCE**

13.1 Directory assistance service is a telephone number, voice information service that a LEC provides to its own end users and to other telecommunications carriers.

13.2 Each Party is responsible for its own arrangements for directory assistance.

13.3 Each Party shall transfer responsibility for its listings with the directory assistance provider within 30 days of the number being transferred.

### **Section 14.0 TOLL AND OPERATOR ASSISTANCE**

14.1 Toll and operator assistance services are a family of offerings that assist end users in completing EAS/local and intraLATA long distance calls.

14.2 Each Party is solely responsible for its end user access to toll and operator services.

### **Section 15.0 TROUBLE REPORTING**

15.1 In order to facilitate trouble reporting and to coordinate the repair of Interconnection Facilities, trunks, and other interconnection arrangements provided by the Parties under this Agreement, each Party has established contact(s) available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other interconnection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

#### **24-Hour Network Management Contact:**

##### For Eastern:

NOC/Repair Contact Number: 402-533-1000

Facsimile Number: 402-533-5798

##### For Aventure:

NOC/Repair Contact Number: 712-252-3800

Facsimile Number: 712-277-0805

15.2 Before either party reports a trouble condition, it must first use its reasonable efforts to isolate the trouble to the other Party's facilities, service, and arrangements.

Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other party shall use its best efforts to expedite the clearance of trouble.

## **Section 16.0 AUDIT PROCESS**

Either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Attachment. An audit may be conducted no more frequently than once per 12 month period, and only to verify the other Party's compliance with provisions of this Attachment. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates listed below.

Aventure Communications Technology

Eastern Nebraska Telephone Company

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 1**

**INTERCONNECTION TRUNKING ARRANGEMENTS  
AND  
SPECIFIED POINTS OF INTERCONNECTION**

EASTERN SWITCH  
LOCATION  
(CLLI Code)

AVENTURE POI  
(CLLI Code)

RC  
(Rate Center)

WLHLNEXH84A  
Walthill, NE

