

Commercial Mobile Radio Services (CMRS)
INTERCONNECTION AGREEMENT
FOR THE STATE
OF
NEBRASKA

NE Colorado Cellular, Inc. d/b/a Viaero

and

United Telephone Company of the West d/b/a Embarq

Effective: August 1, 2009

Ending: July 31, 2011

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CMRS INTERCONNECTION AGREEMENT

This CMRS Interconnection Agreement (“Agreement”), is entered into by and between NE Colorado Cellular, Inc. d/b/a Viaero (“Carrier”), a Nebraska CMRS provider, and United Telephone Company of the West d/b/a Embarq (“Embarq”), a Delaware corporation, hereinafter collectively, “the Parties,” entered into and effective this 1st day of August, 2009 (“Effective Date”).

WHEREAS, the Parties wish to interconnect their networks for the transmission and termination of Local Traffic (as defined in this Agreement) between Embarq and Carrier; and

WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended (the “Act”), the Rules and Regulations of the Federal Communications Commission (“FCC”), and the orders, rules and regulations of the Nebraska Public Service Commission (“Commission”); and

WHEREAS, the parties wish to replace any and all other prior interconnection agreements, both written and oral, applicable to the state of Nebraska;

Now, therefore, in consideration of the terms and conditions contained in this Agreement, Carrier and Embarq hereby mutually agree as follows:

PART A – DEFINITIONS

1. DEFINED TERMS

- 1.1. Certain terms used in this Agreement shall have the meanings as otherwise defined throughout this Agreement. Other terms used but not defined in this Agreement will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Commission. The Parties acknowledge that other terms appear in this Agreement which are not defined or ascribed as stated above. The meaning of those terms shall be their customary usage in the telecommunications industry as of the Effective Date of this Agreement.
- 1.2. “Act” means the Communications Act of 1934, as amended.
- 1.3. “Affiliate” is as defined in the Act.
- 1.4. “Ancillary Traffic” means all traffic destined for ancillary services, or that may have special billing requirements, including, but not limited to the following:
 - 1.4.1.1. Directory Assistance;
 - 1.4.1.2. 911/E911;

- 1.4.1.3. Operator call termination (busy line interrupt and verify); and
- 1.4.1.4. Information services requiring special billing (e.g., 900 and 950).
- 1.5. "Business Day(s)" means the days of the week excluding Saturdays, Sundays, and all official legal holidays.
- 1.6. "Central Office Switches" ("COs") are switching facilities within the public switched telecommunications network, including, but not limited to:
 - 1.6.1.1. "End Office Switches" ("EOs") are landline switches from which end-user Telephone Exchange Services are directly connected and offered.
 - 1.6.1.2. "Tandem Switches" are switches which are used to connect and switch trunk circuits between and among Central Office Switches.
 - 1.6.1.3. "Mobile Switching Centers" ("MSCs") are an essential element of the CMRS network which perform the switching for the routing of calls among its mobile subscribers and subscribers in other mobile or landline networks. The MSC also coordinates intercell and intersystem call hand-offs and records all system traffic for analysis and billing.
 - 1.6.1.4. "Remote Switches" are switches in landline networks that are away from their host or control office. All or most of the central control equipment for the remote switch is located at the host or control office.
- 1.7. "Commercial Mobile Radio Services" ("CMRS") means a radio communication service as set forth in 47 C.F.R. Section 20.3.
- 1.8. "Common Transport" means a local interoffice transmission path between two Tandem Switches, between a Tandem Switch and an Embarq End Office Switch, or between two End Office Switches or between an Embarq End Office Switch and a Remote Switch. Common transport is shared between multiple customers.
- 1.9. "Effective Date" is the date referenced in the opening paragraph on page 1 of the Agreement, unless otherwise required by the Commission.
- 1.10. "End Date" is the date this Agreement terminates.
- 1.11. "End Office" is the central office to which a telephone subscriber is connected. The last central office before the subscriber's phone equipment. The central office which actually delivers dial tone to the subscriber. It establishes line to line, line to trunk, and trunk to line connections.
- 1.12. "Electronic Interfaces" means access to operations support systems consisting of pre-ordering, ordering, provisioning, maintenance and repair and billing functions.
- 1.13. "FCC" means the Federal Communications Commission.

- 1.14. “Incumbent Local Exchange Carrier” (“ILEC”) is any local exchange carrier that was, as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. Section 69.601(b) of the FCC’s regulations.
- 1.15. “Interconnection” is as defined in 47 C.F.R. 51.5.
- 1.16. “Interexchange Carrier” (“IXC”) means a provider of interexchange telecommunications services.
- 1.17. “InterMTA Traffic.” For purposes of intercarrier compensation under this Agreement, InterMTA Traffic means telecommunications traffic between Embarq and a CMRS provider that, at the beginning of the call, originates in one Major Trading Area but terminates in a different Major Trading Area. For purposes of determining whether traffic originates and terminates in different MTAs, and therefore whether the traffic is InterMTA, the location of the landline end user and the location of the cell site that serves the mobile end user at the beginning of the call may be used.
- 1.18. “IntraLATA Toll Traffic” means telecommunications traffic as defined in accordance with Embarq’s then-current intraLATA toll serving areas to the extent that said traffic originates and terminates within the same LATA.
- 1.19. “Local Traffic” means, for purposes of reciprocal compensation under this Agreement, telecommunications traffic between Embarq and Carrier that, at the beginning of the call, originates and terminates within the same MTA, as defined in 47 C.F.R. 24.202. This shall not affect Embarq’s landline calling scope or other interexchange arrangements which shall be determined in accordance with Commission-approved local calling areas. For purposes of this Agreement, Local Traffic does not include any ISP-bound traffic. Neither Party waives its rights to participate and fully present its respective positions in any proceeding dealing with the compensation for ISP-bound traffic.
- 1.20. “Major Trading Area” (“MTA”) refers to the largest FCC-authorized wireless license territory which serves as the definition for local service area for CMRS traffic for purposes of reciprocal compensation under Section 251(b)(5) as defined in 47 C.F.R. 24.202(a).
- 1.21. “Multiple Exchange Carrier Access Billing” (“MECAB”) refers to the document prepared by the Billing Committee of the Alliance for Telecommunications Industry Solutions’ (“ATIS”) Ordering and Billing Forum (“OBF”). The MECAB document contains the recommended guidelines for the billing of access services provided to a customer by two or more telecommunications carriers, or by one telecommunications carrier in two or more states within a single LATA.
- 1.22. “Multiple Exchange Carrier Ordering And Design (“MECOD”) Guidelines for Access Services – Industry Support Interface” refers to the document developed by the Ordering/Provisioning Committee of the Alliance for Telecommunications

Industry Solutions' (ATIS) Ordering and Billing Forum (OBF). The MECOD document contains the recommended guidelines for processing orders for access service which is to be provided by two or more telecommunications carriers.

- 1.23. "North American Numbering Plan" ("NANP") means the plan for the allocation of unique ten-digit directory numbers consisting of a three-digit area code, a three-digit office code, and a four-digit line number. The plan also extends to format variations, prefixes, and special code applications.
- 1.24. "Numbering Plan Area" ("NPA" – sometimes referred to as an area code) means the three-digit indicator which is designated by the first three digits of each ten-digit telephone number within the NANP. Each NPA contains 8YY possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs." A "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code (SAC Code)" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 500, 800, 900, 700, and 888 are examples of Non-Geographic NPAs.
- 1.25. "NXX," "NXX Code," or "Central Office Code," or "CO Code" is the three-digit switch entity indicator which is defined by the fourth, fifth and sixth digits of a ten-digit telephone number within the NANP.
- 1.26. "Ordering And Billing Forum" ("OBF") refers to functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS).
- 1.27. "Parity" means, subject to the availability, development and implementation of necessary industry standard Electronic Interfaces, the provision by Embarq of services, Network Elements, functionality or telephone numbering resources under this Agreement to Carrier, including provisioning and repair, at least equal in quality to those offered to Embarq, its Affiliates or any other entity that obtains such services, Network Elements, functionality or telephone numbering resources. Until the implementation of necessary Electronic Interfaces, Embarq shall provide such services, Network Elements, functionality or telephone numbering resources on a non-discriminatory basis to Carrier as it provides to its Affiliates or any other entity that obtains such services, Network Elements, functionality or telephone numbering resources.
- 1.28. "Point Of Interconnection" ("POI") is a mutually agreed upon physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between Carrier and Embarq for the local interconnection of their networks for the mutual exchange of traffic.

- 1.29. "Revenue Accounting Office" ("RAO") means a data center that produces subscriber bills from the host office's automatic message account data.
- 1.30. "Tandem Switching" means the function that establishes a communications path between two switching offices (connecting trunks to trunks) through a third switching office (the tandem switch) including but not limited to CARRIER, Embarq, independent telephone companies, and wireless Carriers.
- 1.31. "Tariff" means a filing made at the state or federal level for the provision of a telecommunications service by a telecommunications carrier that provides for the terms, conditions and pricing of that service. Such filing may be required or voluntary and may or may not be specifically approved by the Commission or FCC.
- 1.32. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- 1.33. "Telecommunications Carrier" means any provider of Telecommunications Services as defined in 47 U.S.C. 153, Section 3.
- 1.34. "Telecommunication 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.
- 1.35. "Transit Service" means the use of Embarq's tandem to deliver Transit Traffic.
- 1.36. "Transit Traffic" means Local Traffic that is routed by Carrier through Embarq's network to a third party Telecommunications Carrier's network, or that is routed by a third party Telecommunications Carrier through Embarq's network for delivery to Carrier's network. For purposes of this Agreement, Transit Traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly provided Switched Access.
- 1.37. "Trunk-Side" refers to a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity or another central office switch. Trunk-side connections offer those transmission and signaling features appropriate for the connection of switching entities, and cannot be used for the direct connection of ordinary telephone station sets.
- 1.38. "Wire Center" denotes a building or space within a building, which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire center can also denote a building in which one or more Central Offices, used for the provision of basic exchange services and access services, are located.

PART B – GENERAL TERMS AND CONDITIONS

2. SCOPE OF THIS AGREEMENT

- 2.1. This Agreement specifies the rights and obligations of each Party with respect to the establishment of rates, terms and conditions for interconnection with the other's local network under Sections 251 and 252 of the Act ("Interconnection Services"). The Interconnection Services set forth in this Agreement address the exchange of traffic between Carrier and Embarq. If such traffic is Local Traffic, the provisions of this Agreement shall apply. The Interconnection services covered by this Agreement are for Wireless Interconnection for Carrier only in association with its own CMRS services. Wireless Interconnection hereunder is intended for Wireless to Wireline or Wireline to Wireless, but not Wireline to Wireline communications. Such Wireless Interconnection will not be used to terminate other types of traffic exchanged on the network under the terms and conditions of this Agreement.
- 2.2. Other interconnections are covered by separate contract, tariff or price lists. Carrier may also take such other services not covered by this agreement as the Parties may agree either pursuant to applicable state tariffs or separate agreement ("Non-interconnection Services"). The rates, terms and conditions for such Non-interconnection Services shall be as designated in the applicable tariff or separate agreement. Any incidental services (e.g., directory assistance, operator services, etc.) will be billed at the standard rates for those services.
- 2.3. Embarq shall provide notice of network changes and upgrades in accordance with §§ 51.325 through 51.335 of Title 47 of the Code of Federal Regulations. Embarq may discontinue any interconnection arrangement, Telecommunications Service, or Network Element provided or required hereunder due to network changes or upgrades after providing Carrier notice as required by this section. Embarq will cooperate with Carrier and/or the appropriate regulatory body in any transition resulting from such discontinuation of service and to minimize the impact to customers, which may result from such discontinuance of service.
- 2.4. The services and facilities to be provided to Carrier by Embarq in satisfaction of this Agreement may be provided pursuant to Embarq Tariffs and then current practices on file with the appropriate Commission or FCC. In the event that the provisions of this agreement and the tariff are in conflict, then the terms of the tariff will prevail.

3. REGULATORY APPROVALS

- 3.1. This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. Embarq and Carrier shall use their best efforts to obtain approval of this Agreement by any

regulatory body having jurisdiction over this Agreement and to make any required tariff modifications. Carrier shall not order services under this Agreement before the Effective Date except as may otherwise be agreed in writing between the Parties. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

- 3.2. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date (“Applicable Rules”). In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award or other legal action purporting to apply the provisions of the Act which revises, modifies or reverses the Applicable Rules (individually and collectively, “Amended Rules”), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.
- 3.3. Section 3.2 shall control notwithstanding any other provision of this Agreement to the contrary. Any rates, terms or conditions thus developed or modified shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date established by the Amended Rules, whether such action was commenced before or after the Effective Date of this Agreement. Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, the Parties shall present any such issues to the Commission or the FCC to establish appropriate interconnection arrangements under the Act in light of the Amended Rules, it being the intent of the parties that this Agreement shall be brought into conformity with the then current obligations under the Act as determined by the Amended Rules.
- 3.4. Notwithstanding anything in this Agreement to the contrary, in the event that as a result of any effective decision, order, or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, Embarq determines that it is not required to furnish any service, facility, arrangement, or benefit required to be furnished or provided to Carrier under this Agreement, then Embarq may discontinue any service, facility, arrangement, or benefit (“Discontinued Arrangement”) to the extent permitted by any such decision, order, or determination by providing sixty (60) days' written notice to Carrier. Immediately upon provision of such written notice to Carrier, Carrier will be prohibited from ordering and Embarq will not provide new Discontinued Arrangements.

- 3.5. Additional services, beyond those specified in this Agreement, requested by either Party relating to the subject matter of this Agreement will be incorporated into this Agreement by written amendment hereto.

4. TERM AND TERMINATION

- 4.1. This Agreement shall be deemed effective upon the Effective Date first stated above, and continue for a period of two years until July 31, 2011 (“End Date”), unless earlier terminated in accordance with this Section 4, provided however that if CLEC has any outstanding past due obligations to Embarq or any of Embarq’s affiliates, this Agreement will not be effective until such time as any past due obligations with Embarq are paid in full. No order or request for services under this Agreement shall be processed before the Effective Date. No order or request for services under this Agreement shall be processed before Carrier has established a customer account with Embarq and has completed the Implementation Plan described in this Agreement.
- 4.2. For any Interconnection arrangements covered by this Agreement that may already be in place, once this Agreement is deemed effective, the rates contained in Table One shall be applied to those arrangements. To the extent that Embarq is not able to bill the new rates for the pre-existing Interconnection arrangements on the Effective date, once billing is possible, the rate will be applied to the pre-existing Interconnection arrangements retroactively to the Effective date of this Agreement. The interim billing processes, as defined in subsequent sections of this Agreement, will be implemented as needed.
- 4.3. Except as provided elsewhere in this Agreement, Embarq and Carrier will provide service to each other on the terms of this Agreement for a period ending on the End Date.
- 4.4. In the event that Carrier desires uninterrupted service under this Agreement during negotiations, Carrier shall provide to Embarq written notification appropriate under the Act. If the Parties are actually in arbitration before the appropriate Commission or FCC prior to the End Date, this Agreement will continue in effect only until the issuance of an order, whether a final non-appealable order or not, by the Commission or FCC resolving the issues set forth in such arbitration request.
- 4.5. In the event of default, either Party may terminate this Agreement in whole or in part if the non-defaulting Party so advises the defaulting Party in writing of the event of the alleged default and the defaulting Party does not remedy the alleged default within 30 days after written notice thereof. Default is defined to include:
 - 4.5.1. Either Party’s insolvency or initiation of bankruptcy or receivership proceedings by or against the Party; or

- 4.5.2. Either Party's material breach of any of the terms or conditions hereof, including the failure to make any undisputed payment when due.
- 4.6. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation which is expressly stated to survive termination.
- 4.7. Notwithstanding the above, should Embarq sell or trade substantially all the assets in an exchange or group of exchanges that Embarq uses to provide Telecommunications Services, then Embarq may terminate this Agreement in whole or in part as to that particular exchange or group of exchanges upon 60 days prior written notice.

5. POST TERMINATION INTERIM SERVICE ARRANGEMENTS

- 5.1. No later than one-hundred sixty (160) Days prior to the End Date, Carrier will provide Embarq notice to commence negotiations pursuant to §§251 and 252 of the Act for terms, conditions and rates for a successor agreement to be effective on or before the End Date.
- 5.2. In the event that this Agreement expires under §4.3, and the Parties have not executed a successor agreement at the time of expiration, provided the Parties are actually in arbitration or mediation before the Commission or FCC under §252 of the Act or the Parties have a written agreement to continue negotiations under §252, should a new agreement not be consummated prior to the End Date, it is the intent of the Parties to provide in this Section for post-expiration interim service arrangements between the Parties so that service to end users will not be interrupted should a new agreement not be consummated prior to the End Date. Therefore, except in the case of termination as a result of either Party's default under §4.5, or for termination upon sale under §4.7, for services that had been available under this Agreement, were ordered prior to the End Date and were actually in-service as of the End Date, may continue uninterrupted at the request of either Party only until the earlier to occur of (i) the Parties execute a successor agreement, (ii) the issuance of an order, whether a final non-appealable order or not, by the Commission or FCC, approving an agreement resulting from the resolution of the issues set forth in such arbitration or mediation request, or (iii) the first anniversary of the End Date.
- 5.3. In the event that on the End Date the Parties have not executed a successor agreement and Section 5.2 does not apply or no longer applies, Embarq will continue to provide services pursuant to one of the following:
- 5.3.1. a new agreement is voluntarily entered into by the Parties; or

- 5.3.2. service is provided under such standard terms and conditions or tariffs approved by and made generally available by the Commission, if they exist at the time of termination; or
- 5.3.3. Carrier elects to take service pursuant to the entire terms and conditions of an existing agreement between Embarq and another carrier for the remaining term of that agreement. If neither §5.3.1 nor §5.3.2 are in effect, and Carrier does not designate an agreement under this subsection, Embarq may designate an agreement.

6. AUDITS AND EXAMINATIONS

- 6.1. “Audit” shall mean a comprehensive review of services performed under this Agreement. Either Party (the “Requesting Party”) may perform one Audit per 12-month period commencing with the Effective Date.
- 6.2. Upon 30 days written notice by the Requesting Party to the other “Audited Party,” Requesting Party shall have the right through its authorized representative to make an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the provision of the services provided and performance standards agreed to under this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the documents and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party will provide Audit support, including appropriate access to and use of Audited Party’s facilities (e.g., conference rooms, telephones, copying machines).
- 6.3. Each Party shall bear its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this §6.3, a “special data extraction” shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to Requesting Party’s specifications and at Requesting Party’s expense, Requesting Party shall specify at the time of request whether the program is to be retained by Audited Party for reuse for any subsequent Audit.
- 6.4. Adjustments, credits or payments shall be made and any corrective action shall commence within 30 days from Requesting Party’s receipt of the final audit report to compensate for any errors or omissions which are disclosed by such Audit and are agreed to by the Parties. One and one-half percent (1.5%) or the highest interest rate allowable by law for commercial transactions, whichever is lower, shall be assessed and shall be computed by compounding monthly from the time of the error or omission to the day of payment or credit.

- 6.5. Neither the right to audit nor the right to receive an adjustment shall be affected by any statement to the contrary appearing on checks or otherwise, unless a statement expressly waiving such right appears in writing, is signed by an authorized representative of the Party having such right and is delivered to the other Party in a manner sanctioned by this Agreement.
- 6.6. This Section shall survive expiration or termination of this Agreement for a period of two years after expiration or termination of this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.

8. LIMITATION OF LIABILITY

- 8.1. Neither Party shall be responsible to the other for any indirect, special, consequential or punitive damages, including (without limitation) damages for 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"), whether arising in contract or tort, except that the foregoing shall not limit a Party's obligation under Section 9 to indemnify, defend, and hold the other Party harmless against amounts payable to third parties. Notwithstanding the foregoing, in no event shall either Party's liability to the other for a service outage exceed an amount equal to the proportionate charge for the service(s) provided for the period during which the service was affected.
- 8.2. Neither Party, its parents, subsidiaries, affiliates, agents, servants or employees shall be liable for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, 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 willful misconduct.
- 8.3. Notwithstanding the foregoing, in no event shall Embarq's liability to Carrier for a service outage exceed an amount equal to the proportionate charge for the service(s) or unbundled element(s) provided for the period during which the service was affected.

9. INDEMNIFICATION

- 9.1. Each Party will defend, indemnify and hold harmless the other Party from and against claims by third parties for damage to tangible personal or real property and/or personal injuries to the extent caused by the willful misconduct or omission of the indemnifying Party.
- 9.2. Carrier shall defend, indemnify and hold harmless Embarq from all claims by Carrier's subscribers.
- 9.3. Embarq shall defend, indemnify and hold harmless Carrier from all claims by Embarq's subscribers.
- 9.4. The indemnifying Party will defend any suit brought against the other Party either individually or jointly with the indemnified Party for any such loss, injury, liability, claim or demand as set forth in this section 9.
- 9.5. The indemnified Party will notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Article and to cooperate in every reasonable way to facilitate defense or settlement of claims.
- 9.6. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Article for settlement by the indemnified Party of any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to promptly assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.
- 9.7. When the lines or services of other companies are used in establishing connections to and/or from points not reached by a Party's lines, neither Party shall be liable for any act or omission of the other companies or carriers.
- 9.8. In addition to its indemnity obligations hereunder, each Party shall, to the extent allowed by law or Commission Order, provide, in its tariffs and contracts with its subscribers that relate to any Telecommunications Services provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such Party be liable to any subscriber or third party for (i) any loss relating to a third party agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable subscriber for the service(s) or function(s) that gave rise to such loss, and (ii) Consequential Damages (as defined in §8.1 above).

10. CONFIDENTIALITY AND PUBLICITY

- 10.1. All information which is disclosed by one Party (“Disclosing Party”) to the other (“Recipient”) in connection with this Agreement, or acquired in the course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and Customer Proprietary Network Information (“CPNI”) as that term is defined by the Act and the rules and regulations of the FCC (“Confidential and/or Proprietary Information”).
- 10.2. For a period of three years from receipt of Confidential Information, Recipient shall (1) use it only for the purpose of performing under this Agreement, (2) hold it in confidence and disclose it only to employees or agents who have a need to know it in order to perform under this Agreement, and (3) safeguard it from unauthorized use or Disclosure using no less than the degree of care with which Recipient safeguards its own Confidential Information.
- 10.3. Recipient shall have no obligation to safeguard Confidential Information (1) which was in the Recipient’s possession free of restriction prior to its receipt from Disclosing Party, (2) which becomes publicly known or available through no breach of this Agreement by Recipient, (3) which is rightfully acquired by Recipient free of restrictions on its Disclosure, or (4) which is independently developed by personnel of Recipient to whom the Disclosing Party’s Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, if the Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and the Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient will comply with any protective order that covers the Confidential Information to be disclosed.
- 10.4. Unless otherwise agreed, neither Party shall publish or use the other Party’s logo, trademark, service mark, name, language, pictures, or symbols or words from which the other Party’s name may reasonably be inferred or implied in any product, service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. This §9.4 shall confer no rights on a Party to the service marks, trademarks and trade names owned or used in connection with services by the other Party or its Affiliates, except as expressly permitted by the other Party.
- 10.5. Neither Party shall produce, publish, or distribute any press release or other publicity referring to the other Party or its Affiliates, or referring to this Agreement, without the prior written approval of the other Party. Each Party shall obtain the other Party’s prior approval before discussing this Agreement in any press or media interviews. In no event shall either Party mischaracterize the

contents of this Agreement in any public statement or in any representation to a governmental entity or member thereof.

- 10.6. Except as otherwise expressly provided in this Section 9, nothing in this Agreement limits the rights of either Party with respect to its customer information under any applicable law, including without limitation Section 222 of the Act.

11. WARRANTIES

- 11.1. Except as specifically provided elsewhere in this agreement to the contrary, neither Party makes any representations or warranties, express or implied, with respect to quality, functionality or characteristics of the services provided pursuant to this Agreement, including, but not limited to, implied warranties of merchantability and/or fitness for a particular purpose. No representation or statement made by either Party or any of its agents or employees, oral or written, including, but not limited to, any specifications, descriptions or statements provided or made shall be binding upon either Party as a warranty.

12. ASSIGNMENT AND SUBCONTRACT

- 12.1. If any Affiliate of either Party succeeds to that portion of the business of such Party that is responsible for, or entitled to, any rights, obligations, duties, or other interests under this Agreement, such Affiliate may succeed to those rights, obligations, duties, and interest of such Party under this Agreement upon written notice to the other Party. In the event of any such succession hereunder, the successor shall expressly undertake in writing to the other Party the performance and liability for those obligations and duties as to which it is succeeding a Party to this Agreement.
- 12.2. Except as provided in this Section 12, and except for an assignment confined solely to moneys due or to become due, any assignment of this Agreement or of the obligations to be performed, in whole or in part, or of any other interest of a Party hereunder, without the other Party's written consent, shall be void. It is expressly agreed that any assignment of moneys shall be void to the extent that it attempts to impose additional obligations other than the payment of such moneys on the other Party or the assignee additional to the payment of such moneys. Upon a request by a Party for such consent, the other Party shall not unreasonably withhold or delay such consent, provided however, that reasonable grounds for withholding consent would include, without limitation, the existence of any material default by the requesting Party.
- 12.3. If a Party uses products or services obtained from the other Party under this Agreement to serve end user customers, then such Party may not make any sale or transfer of such end user customer accounts unless the purchaser or transferee has executed a written agreement to assume liability for any outstanding unpaid balances owed to the other Party under this Agreement for such services and

products. Notwithstanding any assumption of liability by the purchaser or transferee, the Party selling or transferring such end user customer accounts shall remain jointly liable for the unpaid balances until the same are satisfied, in full, unless the selling or transferring Party obtains a written release of liability from the other Party, which release shall be at the reasonable discretion of the other Party.

13. GOVERNING LAW

13.1. This Agreement shall be governed by and construed in accordance with the Act and the FCC’s Rules and Regulations, and other authoritative statements, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the state where this Agreement is filed, without regard to its conflicts of laws principles, shall govern.

14. RELATIONSHIP OF PARTIES

14.1. It is the intention of the Parties that each shall be an independent contractor and nothing contained in this Agreement shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

15. NO THIRD PARTY BENEFICIARIES

15.1. The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person, and this Agreement shall not provide any person not a Party hereto with any remedy, claim, liability, reimbursement, right of action, or other right in excess of those existing without reference hereto. This shall not be construed to prevent Carrier from providing its Telecommunications Services to other carriers.

16. NOTICES

16.1. Except as otherwise provided in this Agreement, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person, or sent by certified mail, postage prepaid, return receipt requested, on the date the mail is delivered or its delivery attempted.

If to
Embarq: Director, Contract Management
Embarq
9300 Metcalf
KSOPKB0402-413
Overland Park, KS 66212

If to
Carrier: Melody L. Scheihing
Network Facilities Engineer
1224 W. Platte Ave
Fort Morgan, CO 80701
970-542-3664
melody.scheihing@viaero.com

With a Senior Attorney
copy to: Embarq External Affairs
 902 Wasco St.
 MS: ORHDRA04-436
 Hood River, OR 97031-3103

- 16.2. If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section 16.

17. WAIVERS

- 17.1. No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed.
- 17.2. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.
- 17.3. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

18. SURVIVAL

- 18.1. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination including but not limited to Sections 5, 6, 7, 8, 9, 10, 11, 21, and 23.

19. FORCE MAJEURE

- 19.1. Neither Party shall be held 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, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, strikes, work stoppage affecting a supplier or unusually severe weather. No delay or other failure to perform shall be excused pursuant to this Section 18 unless delay or failure and consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Subject to Section 3 hereof,

in the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delayed Party shall perform its obligations at a performance level no less than that which it uses for its own operations. In the event of such performance delay or failure by Embarq, Embarq will resume performance in a nondiscriminatory manner and not favor its own provision of Telecommunications Services above that of Carrier.

20. DISPUTE RESOLUTION PROCEDURES

- 20.1. The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve (other than non-251 services) may be submitted to the Commission for resolution in the manner provided for herein. The dispute resolution provisions of this Section shall not preclude the Parties from seeking relief available in any other forum.
- 20.2. A Party may not submit a dispute to the Commission for resolution unless at least sixty (60) Days have elapsed after the Party asserting the dispute has given written notice of such dispute to the other Party. Such notice must explain in reasonable detail the specific circumstances and grounds for each disputed item, which shall include the specific information required in Section 36.3 for billing disputes. If a Party gives notice of a billing dispute more than thirty (30) Days after the billing date and has not paid the disputed amounts by the payment due date, then the notice of such dispute shall be deemed to have been given thirty (30) Days after the billing date for purposes of calculating the time period before such dispute may be submitted to the Commission.
- 20.3. If the Parties are unable to resolve the issues related to the dispute in the normal course of business within thirty (30) Days after delivery of notice of the Dispute, to the other Party, the dispute shall be escalated to a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The Parties 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 Parties, provided, however, that all reasonable requests for relevant, non-privileged, information made by one Party to the other Party shall be honored, and provided that the following terms and provisions shall apply:
 - 20.3.1. If Embarq provides written notice to the Carrier that a billing dispute has been denied, stating the grounds for such determination, then the Carrier shall have ten (10) Days in which to either pay the disputed amounts or to

send written notice to the National Dispute Center advising that the Carrier disagrees with the determination by Embarq, and such notice may be accompanied by any additional, relevant materials submitted by Carrier. Failure by the Carrier to make a timely response to a notice of denial by Embarq shall result in lifting the suspension of the payment due date for such disputed invoice, and the possible assessment of late charges and suspension or termination of service for non-payment of billed amount in accordance with Section 36.

- 20.3.2. Failure by the Carrier to make a timely response to a notice of denial by Embarq shall also preclude the Carrier from thereafter requesting an escalation of the same dispute under Section 20.4, although the Carrier may file a petition in compliance with Section 20.5.
- 20.4. If the Parties are unable to resolve the dispute in the normal course of business within thirty (30) Days after delivery of notice of the Dispute, then upon the request of either Party, the dispute shall be escalated to other representatives of each Party that have authority to settle the dispute, and such escalation may be repeated every thirty (30) Days during which negotiations continue. Referral of a dispute by a Party to its legal counsel shall be considered an escalation for purposes of this paragraph.
- 20.5. If the Parties are unable to resolve the dispute within sixty (60) Days after delivery of the initial notice of the dispute, then either Party may file a petition or complaint with the Commission seeking resolution of the dispute. The petition or complaint shall include a statement that both Parties have agreed to request an expedited resolution by the Commission within sixty (60) Days from the date on which the petition or complaint was filed with the Commission.
- 20.6. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each Party shall pay half of the fees and expenses so incurred.
- 20.7. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement provided, however, that neither Party shall be required to act in any unlawful fashion.
- 20.8. A dispute which has been resolved by a written settlement agreement between the Parties or pursuant to a determination by the Commission may not be resubmitted under the dispute resolution process.

21. COOPERATION ON FRAUD

- 21.1. The Parties shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud.

22. TAXES

- 22.1. Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be 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 therefore, excluding any taxes levied on income.
- 22.2. Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.
- 22.2.1. Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 22.2.2. 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.
- 22.3. Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.
- 22.3.1. 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.
- 22.3.2. 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.
- 22.3.3. 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 therefore, 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.

- 22.4. 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 any 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.
- 22.5. 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.
- 22.5.1. 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.
- 22.5.2. 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.
- 22.6. Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.
- 22.6.1. Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 22.6.2. 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.
- 22.6.3. 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.

22.6.4. 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 any 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.

22.6.5. 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.

22.6.6. 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 attorneys' 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.

22.6.7. 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.

22.7. 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 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.

23. AMENDMENTS AND MODIFICATIONS

23.1. No provision of this Agreement shall be deemed waived, amended or modified by either Party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties.

24. SEVERABILITY

24.1. Subject to Section 2 – Regulatory Approvals, if any part of this Agreement becomes or is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement

will stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

25. HEADINGS NOT CONTROLLING

25.1. The headings and numbering of Sections, Parts and attachments in this Agreement are for convenience only and shall not be construed to define or limit any of the terms in this Agreement or affect the meaning or interpretation of this Agreement.

26. ENTIRE AGREEMENT

26.1. This Agreement, including all Parts and attachments and subordinate documents attached hereto or referenced in this Agreement, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

27. COUNTERPARTS

27.1. This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

28. SUCCESSORS AND ASSIGNS

28.1. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

29. IMPLEMENTATION

29.1. This Agreement sets forth the overall terms and conditions, and standards of performance for services, processes, and systems capabilities that the Parties will provide to each other. The Parties understand that the arrangements and provision of services described in this Agreement shall require technical and operational coordination between the Parties. Accordingly, the Parties agree to form a team that shall further develop and identify those processes, guidelines, specifications, standards and additional terms and conditions necessary to support the terms of this Agreement.

30. SECURITY DEPOSIT

30.1. Embarq reserves the right to secure the account with a suitable security deposit in the form and amounts set forth herein. If payment of the security deposit is not made within 30 days of the request, Embarq may stop processing orders for service and Carrier will be considered in material breach of the Agreement.

- 30.2. Security deposits shall take the form of cash or cash equivalent, an irrevocable letter of credit or other form of security acceptable to Embarq.
- 30.3. If a security deposit is required on a new account, the security deposit shall be made prior to inauguration of service. If a security deposit is requested for an existing account, payment of the security deposit will be made prior to acceptance by Embarq of additional orders for service.
- 30.4. Security deposits shall be in an amount equal to two (2) months' estimated billings as calculated by Embarq, or twice the most recent month's invoices from Embarq for existing accounts. All security deposits will be subject to a minimum deposit level of \$10,000.
- 30.5. The fact that a security deposit has been made in no way relieves Carrier from complying with Embarq's regulations as to advance payments and the prompt payment of bills on presentation, nor is it a waiver or modification of the regular practices of Embarq for the discontinuance of service for non-payment of any sums due Embarq.
- 30.6. Embarq may increase the security deposit requirements when gross monthly billing has increased beyond the level initially used to determine the security deposit. If payment of the additional security deposit is not made within 30 days of the request, Embarq may stop processing orders for service and Carrier will be considered in breach of the Agreement.
- 30.7. Any security deposit shall be held by Embarq as a guarantee of payment of any charges for services billed to Carrier pursuant to this Agreement or in connection with any other services provided to Carrier by Embarq. Embarq may exercise its right to credit any cash deposit to Carrier's account, or to demand payment from the issuing bank or bonding company of any irrevocable bank letter of credit, upon the occurrence of any one of the following events:
 - 30.7.1. when Carrier's undisputed balances due to Embarq are more than thirty (30) days past due; or
 - 30.7.2. when Carrier files for protection under the bankruptcy laws; or
 - 30.7.3. when an involuntary petition in bankruptcy is filed against Carrier and is not dismissed within sixty (60) days; or
 - 30.7.4. when this Agreement expires or terminates; or
 - 30.7.5. any letter of credit issued hereunder or any bank issuing a letter of credit hereunder (each, a "Letter of Credit Bank") fails to meet the terms, conditions, and requirements set forth below in this Section; or

- 30.7.6. Carrier fails to provide Embarq with a replacement letter of credit on the terms set forth herein at least 10 business days prior to the expiration of any letter of credit issued to Embarq hereunder.
- 30.8. If any security deposit held by Embarq is applied as a credit toward payment of Carrier's balances due to Embarq, then Embarq may require the Carrier to provide a new deposit. If payment of the new deposit is not made within 30 days of the request, Embarq may stop processing orders for service and Carrier will be considered in breach of the Agreement.
- 30.9. Any security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service. No interest will accrue or be paid on deposits.
- 30.10. Any letter of credit issued to Embarq hereunder must meet the following requirements:
- 30.10.1. The bank issuing any letter of credit hereunder (the "Letter of Credit Bank") must maintain a minimum credit rating of A (by Standard & Poors) or A2 (by Moody's). If Carrier proposes that the letter of credit be issued by a bank that is not so rated by Standard & Poors or Moody's, then Carrier must obtain the prior written approval of Embarq to use such bank as the Letter of Credit Bank.
- 30.10.2. The letter of credit shall be in such form and on terms that are acceptable to Embarq and must include an automatic one-year renewal extension.
- 30.10.3. If Carrier receives notice from the Letter of Credit Bank of any non-renewal of a letter of credit issued hereunder, then Carrier shall promptly notify Embarq of such notice of non-renewal. Not later than 10 business days prior to the expiration of the letter of credit, Carrier shall provide Embarq a replacement letter of credit on substantially identical terms to the expiring letter of credit (or such other terms as are acceptable to Embarq). If Carrier provides a replacement letter of credit not later than 10 business days prior to the expiration of the existing letter of credit, then Embarq shall not make a drawing under the expiring letter of credit. Upon receipt of a replacement letter of credit meeting the requirements set forth in this Agreement, Embarq will provide the original, expiring letter of credit to Carrier.
- 30.10.4. If Carrier desires to replace any letter of credit issued to Embarq hereunder, whether due to non-renewal or otherwise, each such replacement letter of credit and the Letter of Credit Bank issuing such replacement letter of credit must meet the terms, conditions and requirements set forth in this Section 30.

PART C – INTERCONNECTION AND INTERCARRIER COMPENSATION

31. INTERCONNECTION

31.1. Point of Interconnection

31.1.1. Carrier shall interconnect with Embarq’s facilities as follows for the purpose of routing or terminating traffic as covered under this Agreement:

31.1.1.1 Carrier must interconnect its network facilities at one or more mutually agreed upon technically feasible Points of Interconnection (collectively referred to as “POI”) on Embarq’s network in each LATA where Carrier has local customers and/or has NPA/NXX rated to a rate center within the LATA. To the extent Embarq’s network contains multiple tandems in the same LATA, Carrier must interconnect at each tandem where it wishes to exchange (i.e., receive or terminate) traffic with Embarq and Carrier has local customers and/or has NPA/NXX rated within the Embarq tandem serving area.

31.1.1.2 Carrier must establish a direct connection at an Embarq end office when total traffic volume exchanged at a particular Embarq end office between Embarq and Carrier exceeds a DS1 equivalent.

31.2. Interconnection Facilities

31.2.1. The Parties may interconnect at a mid-span meet subject to the following terms, conditions and provisions:

- (a) The mid-span meet point, as proposed, must be technically feasible and shall be subject to reasonable engineering, environmental, safety and security requirements. Such requirements shall include, without limitation, the technical ability to accommodate testing on each side of the mid-span meet point and to provide for a point of demarcation between the networks of each party and the ability to control the environment.
- (b) The mid-span meet point must be within or at Embarq’s exchange boundary.
- (c) Embarq will be the “controlling carrier” for purposes of MECOD guidelines, as described in the joint implementation plan.

- (d) Embarq will provide up to 50% of the facilities needed to connect the networks of the Parties, or to Embarq's wire center boundary, whichever is less. Such facilities shall consist only of any new construction needed to extend each Party's existing network to the mid-span meet point and any construction and equipment which is needed at the mid-span meet point itself. Carrier shall be responsible for provisioning 50% of the interconnection facilities or to Embarq's wire center boundary, whichever is greater. Notwithstanding any provision in this Agreement to the contrary, when the Parties interconnect using a mid-span meet, each Party will be financially responsible for the facilities on its side of the mid-span meet and will not bill the other Party for any portion of those facilities.
- (e) The location, equipment and work needed to establish the mid-span meet point shall be subject to mutual agreement of the Parties.

31.2.2. If third-party-leased facilities are used for interconnection, or if Carrier provisioned facilities or Embarq-provided leased facilities are used for Interconnection, or if leased facilities are provided under a meet-point arrangement between Embarq and a third-party, the POI will be defined as the Embarq office in which the leased circuit terminates.

31.2.3. If Carrier elects to lease any portion of the interconnection facility from Embarq or if Carrier chooses to interconnect with Embarq using a meet-point arrangement (i.e. facilities jointly provisioned by Embarq and a third party LEC), Carrier will order those facilities from Embarq's access service tariff at the applicable non-recurring and monthly recurring tariff rates.

31.3. Interconnection to Embarq is possible with the following types of interconnection:

31.3.1. Type 2A Interconnection. A Type 2A Interconnection is a trunk-side connection to an Embarq Tandem Switch that uses either MF or SS7 signaling and supervision. A Type 2A Interconnection provides access to the valid NXX codes served by End Offices subtending the Tandem Switch. A Type 2A Interconnection cannot be used to reach local Operator Services, Directory Assistance or 911/E911. A Type 2A interconnection can be used to establish interconnection to an Interexchange Carrier. Type 2A interconnections that access Interexchange Carriers and local services may require separate trunk groups. Separate trunks may also be required for 8YY traffic. This interconnection type typically requires that Carrier establish its own dedicated NXX. In instances where number pooling, 1000 block pooling

or less than 1000 block numbering utilization is in effect, less than a full NXX may be provided over this interconnection to the extent that the Parties possess the requisite network architecture to support the interconnection.

31.3.2. Type 2B Interconnection. A Type 2B Interconnection is a trunk-side connection to an Embarq End Office that uses either MF or SS7 signaling and supervision. A Type 2B Interconnection only provides access to the valid Embarq NXX codes served by that End Office and Remote Switches subtending that End Office and cannot be used to reach EAS points, Operator Services, 911/E911, or to carry 8YY or 900 traffic. This interconnection type typically requires that Carrier establish its own dedicated NXX. In instances where number pooling, 1000 block pooling or less than 1000 block numbering utilization is in effect, less than a full NXX may be provided over this interconnection to the extent that the Parties possess the requisite network architecture to support the interconnection.

31.3.3. Type 2C Interconnection. A Type 2C Interconnection is a trunk-side connection to an Embarq 911/E911 tandem office that provides access to the Public Safety Answering Point (PSAP).

31.3.4. Type 2D Interconnection. A Type 2D Interconnection is a trunk-side connection directly to an Embarq Operator Services System switch that provides access to operator services call processing capabilities.

31.4. Where Carrier requires ancillary services (e.g., Directory Assistance, Operator Assistance), separate trunks will be provided at Carrier's expense as required for interconnection and routing to such ancillary services.

31.5. The Parties will utilize either two-way or one-way directionalized trunking on shared facilities where available and technically feasible. Orders between Embarq and Carrier to establish, add, change or disconnect trunks shall be processed by utilizing the existing electronic Access Service Request ("ASR"), or such other industry standard that replaces the ASR.

31.6. Establishing a Rate Center

31.6.1. When Embarq delivers traffic to or receives traffic from Carrier on a Type 2A basis, Carrier may establish a rate center for each NPA/NXX that is located within the serving area of the Tandem Switch to which Carrier is interconnected when the chosen rate center is served by the same access Tandem Switch.

31.6.2. Carrier will also designate a rating point and routing point for each NPA/NXX code assigned for Carrier's use. Carrier shall designate one location for each rate center area as the routing point for the NPA/NXXs

assigned for Carrier's use associated with that area, and such routing point shall be within the same LATA as the rate center area but not necessarily within the rate center area itself. Rate center areas may be different for each Party, as appropriate. The routing point associated with each NPA/NXX assigned for Carrier's use need not be the same as the corresponding rate center point, nor must it be located within the corresponding rate center area, nor must there be a unique and separate routing point corresponding to each unique and separate rate center. Notwithstanding the above, the routing point may be in a different LATA than the rating point in circumstances where a routing point is located in the same Tandem Switch serving territory as the rating point.

31.6.3. Notwithstanding anything to the contrary contained in this Agreement, nothing in this Agreement is intended to, and nothing in this Agreement shall be construed to, in any way constrain either Party's choice regarding the size of the local calling area(s) that either Party may establish for traffic originated by its customers.

31.6.4. Carrier will not provide fixed wireless services under the terms of this Agreement.

31.7. For all 911/E911 traffic originating from Carrier, it is the responsibility of Carrier to negotiate with the appropriate state or local public safety answering agency the manner in which 911/E911 traffic from Carrier will be processed.

32. EXCHANGE OF TRAFFIC

32.1. When traffic is not segregated according to traffic types, the Parties will use an InterMTA traffic factor and a percent interstate usage factor ("PIU") to estimate the amount of traffic that is InterMTA.

32.1.1. The InterMTA factor accounts for both mobile-to-land and land-to-mobile traffic exchanged over the local interconnection trunks or indirectly via a foreign ILEC tandem (subject to Section 33.3), but originates and terminates in different MTAs. Based upon the unique MTA boundaries, state borders, network arrangements, and the specific coverage areas served by each of the Parties under this Agreement, for the first three months of this Agreement and thereafter unless changed as provided in this Section, the InterMTA traffic factor shall be 15%, which shall be applied only on minutes of use terminating from Carrier to Embarq, and the PIU factor shall be 20%, such that 20% of the InterMTA traffic shall be treated as interstate, and 80% (100%-20%) shall be treated as intrastate

32.1.2. No reciprocal compensation will be paid by Embarq to Carrier for InterMTA traffic. Embarq may bill Carrier switched access tariffed rates

on the mobile-to-land usage for the InterMTA traffic in accordance with 32.1.1.

- 32.1.3. Following the initial three month period, either Party may conduct a state-specific traffic study, using a minimum of 24 hours of traffic information recorded during a representative, average, period agreed upon by the Parties, in an effort to derive a more accurate InterMTA traffic percentage and/or PIU, the results of which will be used going forward upon mutual agreement of the Parties; provided, however, that the InterMTA factor and PIU shall not be revised more often than once every six months. Carrier will work with Embarq to ensure the necessary traffic data required for sampling purposes is available for such study.
- 32.2. Standard interconnection facilities shall be extended superframe (ESF) with B8ZS line code. Where ESF/B8ZS is not available, Carrier will agree to using other interconnection protocols on an interim basis until the standard ESF/B8ZS is available. Embarq will provide anticipated dates of availability for those areas not currently ESF/B8ZS compatible.
- 32.3. Where Carrier is unwilling to utilize an alternate interconnection protocol, Carrier will provide Embarq an initial forecast of 64 Kbps clear channel capability ("64K CCC") trunk quantities within thirty (30) Days of the Effective Date consistent with the forecasting agreements between the parties. Upon receipt of this forecast, the parties will begin joint planning for the engineering, procurement, and installation of the segregated 64K CCC Local Interconnection Trunk Groups, and the associated ESF facilities, for the sole purpose of transmitting 64K CCC data calls between Carrier and Embarq. Where additional equipment is required, such equipment would be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for IXC, Carrier, or Embarq internal customer demand for 64K CCC trunks.
- 32.4. Where available, Embarq will provide and implement all defined and industry supported SS7 mandatory parameters as well as procedures in accordance with ANSI standards to support SS7 signaling for call setup for the interconnection trunks. To the extent Embarq provides ANSI optional parameters for its own use, Embarq shall provide the same to Carrier.
- 32.5. In the event SS7 facilities are not available from Embarq, Carrier may, at its option, obtain multifrequency signaling.
- 32.6. Where available, Embarq will provide carrier identification parameter (CIP) within Carrier's SS7 call set-up signaling protocol at no charge.
- 32.7. Embarq shall support intercompany 64 KBPS clear channel where it provides such capability to its end users.

- 32.8. If Carrier interconnects its SS7 network with Embarq's SS7 network, both parties will support CLASS signaling, to the extent each Party offers related features and functions to its own end-users.
- 32.9. Each Party is responsible for the transport of originating calls from its network to the POI, and each Party will ensure that its facilities are compatible with the mutually agreed upon transmission and facility specifications.
- 32.10. Carrier will provide an accurate JIP (Jurisdiction Information Parameter) with all terminating traffic (Mobile to Land.) To the extent that carrier can not provide JIP at the time of the agreement, Carrier will provide a timeline of when JIP will be delivered. In either case, Carrier will deliver JIP within six months from effective date.
- 32.11. Each Party will be responsible for completeness and accuracy of call record data. The Parties will send all available message indicators, including originating telephone number, local routing number and CIC.

33. COMPENSATION

33.1. Non-Local Traffic

33.1.1. Carrier will compensate Embarq for Non-Local Traffic based on the applicable access charges in accordance with FCC and Commission Rules and Regulations.

33.1.2. Toll or Special Access code (e.g., 950, 900) traffic originating from line-side connections between Embarq and Carrier will be routed to the assigned PIC for the line connection or to the appropriate interexchange carrier when 1010XXX dialing is used. Carrier is liable to the assigned interexchange provider for any charges occurring from such traffic. In areas where Embarq is the designated toll carrier, i.e. for lines that are IntraLATA PIC assigned to Embarq or in areas that do not support IntraLATA presubscription, IntraLATA toll will be charged at the appropriate rate out of Embarq's tariff. IntraLATA toll resulting from 0- or 0+ operator calls will also be charged at Embarq's tariffed rate.

33.2. Local Traffic. Under this Agreement, Embarq is only required to compensate Carrier for terminating Local Traffic. The rates set forth on Attachment I shall be used. In the event the FCC or the Commission establishes rates, terms and conditions for transport and termination of local telecommunications traffic, the transport of such traffic or for specific components included therein, that differ from the rates, terms and conditions established pursuant to this Agreement, the rates, terms and conditions established by the FCC or the Commission shall be implemented in this Agreement as of the date the rates, terms and conditions are made effective by the FCC or the Commission.

33.2.1. Reciprocal compensation for Local Traffic

33.2.1.1. Usage Charges. Each rate element utilized in completing a call shall be charged for completion of that call. For example, a call terminating from Carrier over Embarq facilities to an Embarq End Office through an Embarq Tandem Switch would include usage-based charges from Embarq to Carrier for Tandem Switching, Common Transport to the End Office, and End Office Switching.

33.2.1.1.1. Usage Rate Elements.

33.2.1.1.2. End Office Switching (Termination). The End Office Switching rate will be applied to all minutes of use terminating to an Embarq End Office.

33.2.1.1.3. Common Transport rates apply to Carrier traffic transported between Embarq's End Offices and Embarq's Tandem Switches, between Embarq's End Offices and Remotes subtending those End Offices, and between Embarq End Offices where Type 1 Interconnections exist.

33.2.1.1.4. Tandem Switching. The Tandem Switching rate element is charged on every minute of use that is switched by Embarq's Tandem Switch.

33.2.1.2. Traffic Terminating to Embarq

33.2.1.2.1. Embarq will bill Carrier for Carrier-originated Local Traffic terminating on Embarq's network.

33.2.1.2.2. Type 2A Interconnection Charge. Embarq will bill Tandem Switching, Common Transport and End Office Switching rate elements as reflected in Table One for all Local Traffic terminating to Embarq via an Embarq Type 2A Interconnection.

33.2.1.2.3. Type 2B Interconnection Charge. Embarq will bill the End Office Switching rate element, and will bill Common Transport when traffic terminates to an Embarq Remote Switch that subtends the End Office where the Type 2B exists. These rate elements are reflected in Table One for all Local Traffic terminating to Embarq via an Embarq Type 2B Interconnection.

33.2.2. Traffic Terminating to Carrier

33.2.2.1. Carrier will bill Embarq the same rates as Embarq charges Carrier for Embarq-originated Local Traffic terminating on its network.

33.2.2.2. Type 2A Interconnection Charge. Once Carrier has measurement capability, Carrier will bill Embarq rates consisting of the Tandem Switching, Common Transport and End Office Switching rate elements as reflected in Table One for all Embarq-originated Local Traffic terminating to Carrier via an Embarq Type 2A Interconnection.

33.2.2.3. Type 2B End Office Interconnection Charge. Once Carrier has measurement capability, Carrier will bill Embarq the End Office Switching rate as reflected in Table One for all Embarq-originated Local Traffic terminating to Carrier via an Embarq Type 2B End Office Interconnection.

33.2.3. By executing this Agreement and carrying out the intercarrier compensation rates, terms and conditions in this Agreement, neither Party waives any of its rights, and expressly reserves all of its rights, under the *Order on Remand and Report and Order*, FCC 01-131, CC Dockets No. 96-98 and 99-68, adopted April 18, 2001 (the "ISP Compensation Order"), including but not limited to Embarq's option to invoke on a date specified by Embarq the FCC's ISP interim compensation regime, after which date all traffic will be subject to the FCC's prescribed interim compensation regime. On the date designated by ILEC, the Parties will begin billing terms and conditions specified in the FCC's ISP Compensation Order.

33.3. Indirect Traffic

33.3.1. Exchange Of Indirect Traffic

33.3.1.1. The exchange of Indirect Traffic between the Parties shall be subject to the terms, provisions and requirements of this Agreement. For purposes of this Agreement, "Indirect Traffic" means traffic which is originated by one Party and terminated to the other Party in which a third Party Telecommunications Carrier provides the intermediary transiting service.

33.3.1.2. For purposes of exchanging Indirect Traffic there is no physical or direct point of interconnection or physical direct trunk groups between the Parties, therefore neither Party is required to construct new facilities or make mid-span meet arrangements available to the other Party for such Indirect Traffic.

- 33.3.1.3. Carrier must interconnect at the tandem switch which Embarq's end office subtends in order to exchange Indirect Traffic with Embarq.
- 33.3.1.4. Notwithstanding any other provision to the contrary, once the cumulative volume of Indirect Traffic exchanged between the Parties at an Embarq end office exceeds a DS1 equivalent of traffic, Carrier must establish a direct interconnection with Embarq's end office for the mutual exchange of traffic. Within sixty (60) days of when the indirect traffic exceeds a DS1, Carrier shall establish a direct interconnection with Embarq's end office.
- 33.3.1.5. Each Party acknowledges that it is the originating Party's responsibility to enter into transiting arrangements with the third party providing the transit services.
- 33.3.1.6. Each terminating Party is responsible for billing the originating company for traffic terminated on its respective network.
- 33.3.1.7. For Indirect Traffic, the originating Party will provide the originating billing information to the terminating Party, if technically feasible. If the originating Party cannot provide the originating billing information to the terminating Party, then the terminating Party must obtain the originating billing information from the third-party transit company. It is each Party's responsibility to enter into appropriate contractual arrangements with the third-party transit company in order to obtain the originating billing information from the transit company. Any direct costs incurred by the terminating Party to obtain the records from a third party will be billed back to the originating Party.

33.3.2. Compensation for Indirect Traffic

- 33.3.2.1. Until the cumulative volume of Indirect Traffic exchanged between the Parties at an Embarq end office exceeds a DS1, each Party is responsible for the payment of transit charges for its originating traffic assessed by the transiting party. After Indirect traffic exceeds a DS1, if Carrier has not established a direct end office trunking sixty (60) days after Embarq notifies Carrier in writing, Carrier will reimburse Embarq for any transit charges billed by an intermediary carrier.

33.3.2.2. Non-Local Indirect Traffic

- (a) Compensation for the termination and/or origination of non-Local Traffic, and 800 traffic between the interconnecting Parties shall be based on the applicable access charges in accordance with FCC and Commission Rules and Regulations.
 - (b) Toll traffic, switched access, and special access traffic, if separately chargeable, shall be charged the appropriate rate out of the terminating LEC's tariff or via other appropriate meet point access arrangements. Where exact transport mileage is not available, an average, arrived at by mutual agreement of the Parties, will be used.
- 33.4. Paging Traffic. Embarq will not compensate Carrier for termination of paging services until such time as Carrier has filed with and received approval of cost studies from the Commission in accordance with 47 C.F.R. 51.711(c).
- 33.5. To the extent that Carrier does not have the necessary capability to bill Embarq based upon actual, direct Local Traffic, Carrier will bill Embarq based upon 25% (20% ÷80%) of the usage amount billed by Embarq to Carrier. This billing arrangement is based on the traffic reviewed by the Parties and assumes that approximately 80% of the total traffic between the Parties is mobile-to-land traffic terminated to Embarq.
- 33.6. After an initial three-month period, either Party may conduct a state-specific traffic study, using a minimum of 30 days of traffic information, in an effort to derive the actual traffic volumes between the Parties, the results of which will be used going forward upon mutual agreement of the Parties. Traffic study results may be revised and used for Carrier's billing to Embarq every six months thereafter upon mutual agreement of the Parties and at the request of either Party.
- 33.7. Unless otherwise stated in this Agreement, Ancillary Traffic will be exchanged and billed in accordance with whether the traffic is Local/EAS, IntraLATA Toll or Switched Access, if applicable.
- 33.8. Interconnection Facilities
 - 33.8.1. To the extent that Carrier does not have the necessary capability to bill Embarq based upon actual terminating traffic, Embarq and Carrier will allocate the cost of two-way interconnection facilities (facilities carrying both mobile-to-land and land-to-mobile traffic) leased from Embarq based upon an 80% mobile-to-land traffic volume and a 20% land-to-mobile traffic volume (i.e., Carrier will bill Embarq an amount equal to 20% of

Embarq's interconnection facilities billing to Carrier excluding that portion of the facility used for non-Local InterMTA traffic, toll traffic and Transit traffic). Carrier may conduct a state-specific traffic study, using a minimum of 30 days of traffic information, in an effort to derive the actual, direct Local Traffic volumes between the Parties over the interconnection facilities leased from Embarq, the results of which will be used going forward to allocate the cost of interconnection facilities upon mutual agreement of the Parties. Traffic study results may be revised and used for Carrier's billing to Embarq every six months thereafter upon mutual agreement of the Parties and at the request of either Party.

33.8.2. Voice calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP) shall be compensated in the same manner as voice traffic (e.g. reciprocal compensation, interstate access and intrastate access).

34. CHARGES AND PAYMENT

34.1. In consideration of the services provided under this Agreement, the Parties shall pay the charges set forth in Attachment I or referred to in this Agreement.

34.2. Subject to the terms of this Agreement, the Parties shall either pay or dispute invoiced charges within thirty (30) days from the date of the invoice ("Bill Date").

34.2.1. All undisputed charges must be paid by the due date. The filing of a billing dispute does not suspend the payment due date with respect to undisputed amounts on the same invoice. A copy of the dispute must be sent with the payment for the undisputed remainder of the invoice.

34.2.2. If the due date is a Saturday, Sunday or a designated bank holiday, the date due shall be extended until the next Business Day.

34.3. Billing Disputes.

34.3.1. Billing disputes must be submitted to the billing party in writing, itemizing the particular charges in dispute and explaining in reasonable detail the specific grounds for disputing the validity or applicability of such charges.

34.3.2. Disputed charges filed no later than the due date of the related invoice are not due for payment until such disputes have been resolved in accordance with the Dispute Resolution section of this Agreement.

34.3.3. Failure to dispute a charge prior to the due date of the related invoice does not preclude a Party from submitting a dispute at a later time. A charge that is not disputed by the due date remains due for payment

as an undisputed charge, and the non-paying Party is subject to applicable penalties for non-payment, even if the charge is later disputed.

- 34.3.4. Payment of charges does not waive a Party's right to later submit a dispute or to seek a billing adjustment with respect to such paid charges. Parties are not required to designate payments as "conditional" or "under protest" in order to later submit a dispute or seek a billing adjustment with respect to previously paid charges.

34.4. Unpaid Charges

- 34.4.1. Either party may assess late payment charges to the other party until amounts due are paid in full. Late payment charges will be calculated using a rate equal to the lesser of:
 - 34.4.1.1. the total amount due times the highest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days between the payment due date and the date payment is made; or,
 - 34.4.1.2. the total amount due multiplied by a factor of 0.000329, times the number of days between the payment due date and the date payment is made.
- 34.4.2. If an undisputed charge is not paid within 45 Days after the Bill Date, Embarq may suspend processing new orders and cancel any pending orders. Embarq will provide Carrier written notice 10 days prior to taking this action.
- 34.4.3. If the account remains delinquent 60 Days after the Bill Date, Embarq may terminate all services under this Agreement.

35. BILLING

- 35.1. Embarq and Carrier agree to conform to MECAB and MECOD guidelines for meet-point billing arrangements.
- 35.2. No discrete development charges shall be imposed on Carrier or Embarq for the establishment of standard meet-point billing arrangements.
- 35.3. Exchange of Records
 - 35.3.1. Carrier and Embarq will exchange records, as necessary, based upon standards mutually agreed to by the Parties. Carrier and Embarq further agree they will work toward implementing a record exchange process in accordance with industry standards. Both parties will ensure that all

records are accurate and complete and represent the true nature of the traffic.

35.3.2. Carrier and Embarq agree that, until industry standards are developed, they will communicate all billing and record format information through non-industry standard processes. Carrier and Embarq further agree to pursue the development of systems to manage these processes in the future. Upon development of industry standards, both Carrier and Embarq agree to work towards implementation of these standards. The Parties will send all available message indicators, including originating telephone number, local routing number and CIC.

35.4. Embarq and Carrier will exchange test files to support implementation of billing prior to live bill production. Upon request, Carrier and Embarq will provide a report of actual measured traffic.

PART D – NETWORK MAINTENANCE AND MANAGEMENT

36. GENERAL REQUIREMENTS

- 36.1. The Parties will work cooperatively to install and maintain a reliable network. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, etc.) to achieve this desired reliability.
- 36.2. Each Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center. A fax number must also be provided to facilitate event notifications for planned mass calling events. The Parties shall agree upon appropriate network traffic management control capabilities.
- 36.3. Embarq will process Carrier maintenance requests at Parity.
- 36.4. Notice of Network Change. In accordance with Part B, Section 1.4 of this Agreement, the Parties agree to provide each other reasonable notice of network changes. This includes the information necessary for the transmission and routing of services using each other's facilities or networks, as well as other changes that would affect the interoperability of those facilities and networks. At a minimum, Embarq shall comply with all applicable FCC and Commission notification requirements. Correct LERG data is considered part of this requirement.
- 36.5. Embarq will ensure that all applicable alarm systems that support Carrier customers are operational and the support databases are accurate. Embarq will

respond to Carrier customer alarms at Parity with response to alarms for its own carrier customers.

- 36.6. Parties shall provide prior notification of any scheduled maintenance activity performed by the Parties that may be service affecting to the other Party.

37. RESTORATION OF SERVICE IN THE EVENT OF OUTAGES

- 37.1. Embarq shall perform restoration of network elements and services in the event of outages due to equipment failures, human error, fire, natural disaster, acts of God, or similar occurrences at Parity, in accordance with the following priorities. First, restoration priority shall be afforded to those network elements and services affecting its own end users or identified Carrier end users relative to national security or emergency preparedness capabilities and those affecting public safety, health, and welfare, as those elements and services are identified by the appropriate government agencies. Second, restoration priority shall be afforded between Embarq and Carrier in general. Third, should Embarq be providing or performing tandem switching functionality for Carrier, third-level priority restoration should be afforded to any trunk. All service shall be restored as expeditiously as practicable and in a non-discriminatory manner.

38. SERVICE PROJECTIONS

- 38.1. Embarq and Carrier will provide a non-binding two-year inter-company forecast for traffic utilization over trunk groups. These forecasts shall be updated semi-annually or at other standard intervals as mutually agreed to by both Parties. The forecast shall include the following information for each trunk group:

38.1.1. Common Language Location Identifier (CLLI-MSG) codes for Tandem and End Office locations;

38.1.2. Two-Six Codes for each trunk group;

38.1.3. Quantity of trunks in service;

38.1.4. Share usage and share overflow information. This information will be derived by taking the highest usage of a 20-day period (generally a four-week period, not to include weekends or holidays) from the previous 12 months, or other interval as local conditions warrant and are mutually agreed to by both Parties;

38.1.5. Major network projects that affect the other Party. Major network projects include, but are not limited to, trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities by either Party that are reflected by a significant increase or decrease in trunking demand for the two-year forecast window.

39. QUALITY OF SERVICE

- 39.1. Interconnection quality of service shall be at Parity with that provided by Embarq for its own services.
- 39.2. A blocking standard of 1% during the average busy hour shall be maintained for all local interconnection facilities.
- 39.3. Carrier and Embarq shall negotiate a process to expedite network augmentations and other orders when initiated by the other Party.

40. INFORMATION

- 40.1. The Parties must provide order confirmation within 24 hours of completion to ensure that all necessary translation work is completed on newly installed facilities or augments.

PART E – ACCESS TO TELEPHONE NUMBERS

41. GENERAL REQUIREMENTS

- 41.1. It is the responsibility of each Party to program and update its own switches to recognize and route traffic to the other Party's assigned NXX codes. Neither Party shall impose fees or charges on the other Party for required programming and switch updating activities.

PART F – TRANSIT SERVICE (Non-251 Service)

42. TRANSIT TRAFFIC

- 42.1. To the extent network and contractual arrangements exist with all necessary parties throughout the term of this Agreement, Embarq will provide Transit Services for Carrier's connection of its end-users to a local end user of (1) CLECs, (2) an ILEC other than Embarq, and (3) other CMRS carriers. Embarq will only provide a transit service where the Carrier is interconnected at the same Embarq tandem switch to which the terminating carrier is interconnected. Carrier agrees not to route Transit Traffic to a non-Embarq tandem (i.e., double tandem transit traffic) where the NPA-NXX of the number called is rated within Embarq's tandem serving area, and Carrier shall reimburse Embarq for any terminating compensation charged to Embarq by a terminating carrier as a result of any such double tandem Transit Traffic routed by Carrier.
- 42.2. Embarq may require separate trunking for the delivery of such Transit Traffic in order to accurately measure and bill it.
- 42.3. Terms and Conditions
 - 42.3.1. In the event Transit Traffic routed by one Party to the other Party is blocked by a third party, the Party to whom the Transit Traffic was routed will have no obligation to resolve the dispute. Carrier acknowledges that Embarq does not have any responsibility to pay any third-party carrier charges for termination of any Transit Traffic routed to Embarq by the Carrier. Each Party acknowledges that it is the responsibility of the Party routing Transit Traffic to the other Party originating Party's responsibility to enter into arrangements with each third party LEC, CLEC, or CMRS provider for the exchange of Transit Traffic transit traffic to that third party.
 - 42.3.2. Notwithstanding any other provision to the contrary, once the cumulative volume of Transit Traffic exchanged between Carrier and a third party exceeds the equivalent of three (3) DS1s of traffic, Embarq may, but shall not be obligated to require Carrier to establish a direct connection with the parties to whom they are sending traffic. Embarq also reserves the right to require Carrier to establish a direct connection to the third party if, in Embarq's sole discretion, the tandem is at or approaching capacity limitations. These limitations may include but are not limited to a lack of trunk port capacity or processor capacity based on the then existing tandem and network configuration. Within sixty (60) Days after Embarq notifies Carrier of the requirement to direct connect, Carrier shall establish a direct interconnection with such third party. After sixty (60) Days, if Carrier has not established a direct interconnection, Embarq may thereafter charge Carrier for such transit service at double the transit rate set forth in Table One or discontinue providing transit service to Carrier, at the

sole discretion of Embarq, provided however, that Embarq shall exercise such discretion in a non-discriminatory manner.

42.4. Payment Terms and Conditions

42.4.1. Carrier will pay a Transit Service rate as set forth in Table One for any Transit Traffic routed to Embarq by the Carrier.

42.4.2. Carrier may be required to compensate Embarq for transit charges for traffic originated by an ILEC, transited by Embarq and terminated to Carrier

42.5. Billing Records and Exchange of Data

42.5.1. Each Party will use best efforts to convert all network's transporting transit traffic to deliver each call to the other Party's network with SS7 Common Channel Interoffice Signaling (CCIS) and other appropriate TCAP messages in order to facilitate full interoperability and billing functions. The Parties will send all available message indicators, including originating telephone number, local routing number and CIC.

42.5.2. Upon request by the Carrier and to the extent available, Embarq will provide Carrier information on Transit Traffic which is routed to Carrier utilizing Embarq's Transit Service. To the extent Embarq incurs additional cost in providing this billing information, Carrier agrees to reimburse Embarq for its direct costs of providing this information.

42.5.3. To the extent that the industry adopts a standard record format for recording originating and/or terminating transit calls, both Parties will comply with the industry-adopted format to exchange records

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representatives.

“Embarq”

“Carrier”

By: [signed] Michael R. Hunsucker

By: [signed] Wes Burnett

Name: Michael R. Hunsucker

Name: Wes Burnett

Title: Director, Contract Management

Title: VP Tech Ops

Date: 8-3-09

Date: 7-29-09

ATTACHMENT I

Key Codes		Description	State – NE	
MRC	NRC		MRC	NRC
		SERVICE ORDER CHARGES		
	W0001	Manual Service Order		\$16.73
	W0002	Electronic Service Order		\$9.25
		Message Provisioning Charge per Record	\$0.000684	
		RECIPROCAL COMPENSATION		
		End Office Switching Per Minute of Use	\$0.013924	
		Tandem Switching Per Minute of Use	\$0.003302	
		Common Transport Per Minute of Use	\$0.000384	
		E911		
W0024	W0025	DS0 911 Per Port (minimum of 2 DS0's required)	\$104.33	\$193.21
		TRANSIT COMPENSATION		
		TRANSIT Per Minute of Use	\$0.005000	

*The prices in this table are for Interconnection Services as described in this Agreement. Carrier may also take such other services not covered by this Agreement as the Parties may agree either pursuant to applicable state tariffs or separate agreement ("Non-Interconnection Services"). The rates, terms and conditions for such Non-Interconnection Services shall be as designated in the applicable tariff or separate agreement. Any incidental services (e.g. Directory assistance, operator services) will be billed at the standard rates for those services.